Pleaded

1879

11-494

Filed.

April 19.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 267.

SANFORD BAKER, APPELLANT,

vs.

GEORGE P. HUMPHREY, HIRAM D. HURD, CHARLES A. HURD, AND DAVID SMITH.

PHILADELPHIA BAR ASSOCIATION

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

FILED OCTOBER 11, 1877.

SUPREME COURT OF THE UNITED STATES.

No. 267.

SANFORD BAKER, APPELLANT,

vs.

GEORGE P. HUMPHREY, HIRAM D. HURD, CHARLES A. HURD, AND DAVID SMITH.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

INDEX.

	Original.	Print.
Citation and proof of service	1	1
Bill of complaint	3	2
Subpœna and return	11	6
Precipe and appearance	13	7
Answer of defendant Humphrey	15	7
Replication	19	9
Precipe and appearance of defendants	21	9
Order *pro confesso*	23	10
Note of issue for March term, 1874	25	10
Affidavit of Mr. Holbrook	27	11
Motion for extension of time for proofs	31	13
Affidavit of Mr. Wasey	33	13
Order extending time and appointing special examiner	34	14
Consent for substitution of attorneys and order, &c	35	14
Notice of desire to take testimony orally	39	15
Motion to extend time, &c	41	15
Affidavit of Mr. Atkinson	45	16
Stipulation extending time	47	17
Depositions for defendants	49	17
Note of issue March term, 1875	63	24
Order postponing hearing &c	64	24
Motion, notice, &c	65	25
Affidavit of John Atkinson	69	27
Mr. Holbrook—motion and order	71	28
Order extending time	77	29
Motion, notice, &c	79	30
Order extending time	83	31
Depositions for complainant	85	31

	Original.	Print.
Orders, hearing, &c	151	71
Order amending bill	153	71
Amended bill	155	72
Answer of defendant Humphrey	163	76
Replication	166	77
Note of issue, &c	167	78
Deposition of H. D. Hurd and stipulation	169	78
Notice of hearing	179	85
Deposition of Watts S. Humphrey	181	85
Defendants' testimony	183	86
Decree dismissing bill	191	90
Stipulation	193	91
Orders	198	93
Order that decree take effect as of May 10, 1876	200	94
Claim and allowance of appeal	200	94
Copy of appeal bond	205	95
Clerk's certificate	207	96

1 *Citation.*

In the circuit court of the United States for the eastern district of Michigan. In equity.

By the Hon. Henry B. Brown, one of the judges of the circuit court of the United States for the eastern district of Michigan.

To George P. Humphrey, Hiram D. Hurd, Charles A. Hurd & David Smith.

Whereas Sanford Baker has appealed to the Supreme Court of the United States from a decree rendered in the circuit court of the United States for the eastern district of Michigan, in equity, & entered as of the tenth day of May, 1876, dismissing the bill of complaint of the said Sanford Baker, filed in said court against you, and has filed the security required by law:

2 You are therefore cited to appear before the said Supreme Court of the United States, at Washington, on the second Monday of October next, 1877, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of Detroit, in the eastern district of Michigan, this 26th day of March, 1877.

HENRY B. BROWN,
District Judge and one of the Judges of the Circuit Court.

In the circuit court of the United States for the eastern district of Michigan. In equity.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, HIRAM D. HURD, Charles A. Hurd, David Smith.

STATE OF MICHIGAN,
County of Cheboygan:

Samuel H. Taylor, of said county & State, being duly sworn, doth depose & say that on the eighteenth day of April, 1877, he served this citation on George P. Humphrey, defendant, and on the eighteenth day of April, 1877, he served this citation on David Smith, defendant, by delivering to each on that day a true copy thereof, and by showing & exhibiting to each this original & signature of the said Henry B. Brown, judge, they being within the said eastern district of Michigan.

SAM'L H. TAYLOR.

Sworn to & subscribed before me this 18th day of April, 1877. Witness my hand and seal.

[SEAL.]

GEO. W. BELL,
Notary Public, Cheboygan Co., Mich.

In the circuit court of the United States for the eastern district of Michigan. In equity.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, HIRAM D. HURD, Charles A. Hurd, & David Smith,

STATE & EASTERN DISTRICT OF MICHIGAN,
County of Wayne:

Dewitt C. Holbrook, of said county & State, doth depose & say that

the defendants *defendants*, Hiram D. Hurd & Charles A. Hurd, do not reside in the State of Michigan & have no agent or solicitor therein on whom this writ could be served.

D. C. HOLBROOK.

Sworn to and subscribed before me this 21 September, 1877.

ADDISON MANDELL,
Commissioner of Circuit Court
U. S., Eastern District of Mich.

(Indorsed:) In the circuit court of the United States for the eastern district of Michigan. In equity, Sanford Baker vs. George P. Humphrey et al. Citation on appeal. Filed Sept. 20, 1877. A. Mandell cl'k. D. C. Holbrook, sol'r for compl't.

3 *Bill.*

In the circuit court of the United States for the eastern district of Michigan. In equity.

To the judges of the circuit court of the United States for the eastern district of Michigan. In equity.

First. Sanford Baker, of Belleville, in the Province of Ontario, Dominion of Canada, an alien, and subject of the Queen of the United Kingdom of Great Britain and Ireland, brings this bill against George P. Humphrey, Charles A. Hurd, Hiram D. Hurd and David Smith, of Cheboygan, Cheboygan County, Michigan, and citizens of the State of Michigan, and residing in said eastern district.

Second. And thereupon your orator complains and says, that heretofore and on the twenty-seventh day of February, A. D. 1851, one William Scott was the owner and for a long time prior thereto had been in possession of the southwest part of the southwest quarter of section twenty-nine in township thirty eight north, range one west, in Cheboygan County, aforesaid, and which being a fraction was known and called lot 3, in said section; that on the day last aforesaid, said Scott, by a warranty deed, conveyed said premises to one Bela Chapman, which deed was duly recorded in the office of the register of deeds for the county of Mackinaw in said State on the 8th day of March, 1851, in book one, page 299.

Third. That on the same day of the date of said deed, said Chapman, to secure the purchase price thereof, three thousand five hundred dollars, made, executed, and delivered to said Scott his certain mortgage
4 on said premises, by which he conveyed the same to said Scott and his heirs, with a power of sale contained in said mortgage, and which also contained a condition that if the said money secured thereby should be paid, then the said mortgage should be void but in case of non-payment of said money then said Scott, or his assigns, were empowered to proceed and sell said premises under said power; which mortgage was also recorded in said office of register of deeds for said county of Mackinaw the 5th day of March, A. D. 1851, in liber one, page 9.

Fourth. That said Chapman never took possession of said premises, but said Scott and those claiming through and under him by said mortgage and deeds took possession, and have ever since the giving of said mortgage been in the actual possession of the whole of said premises and claimed to be the sole owners thereof.

Fifth. That on the 29th day of November, A. D. 1851, said Scott as-

signed said mortgage to one Jacob Sammons, which assignment was on the 19th day of March, 1852, duly recorded in the proper registry of deeds in book one, page 12; that afterwards said Sammons conveyed said premises William M. Belote; the same was afterwards, by said Belote, conveyed to one Jeremiah W. Duncan, who on becoming deceased, one Walter Crane was appointed receiver of all his, said Duncan's, estate, by the circuit court for the county of Cheboygan, in chancery, in a cause pending therein, wherein John A. Duncan is complainant and Jeremiah Woolston, Alfred D Woolston, John R. McLeod, Richard B. Duncan, Charles Duncan, Henry B. Duncan, Elizabeth Duncan, John A. Duncan, and William Duncan were defendants, and, by virtue of and under the authority of said court, said Crane sold and conveyed said
5 premises to John McArthur, Lucius Southwick, George W. Swan, and John F. McDonald; that said McArthur, Southwick, Swan and McDonald afterwards conveyed their interest in the south part of said premises to your orator, Robert Patterson, and Archibald C. Thompson, and said Patterson conveyed his interest in said south half to Nathan Mears, Eli Bates, and your orator, and said Archibald C. Thompson conveyed his interest in and to said premises to said Mears and Bates; that said Mears and Bates afterwards conveyed their interest therein to one Thompson Smith, who then became joint and equal owner in common with your orator; that afterwards said Thompson Smith conveyed all his interest therein to your orator; that the said the said several transfers and conveyances above referred to were duly recorded in the proper registry of deeds where by law the same were respectively authorized and required to be at the time recorded; that many were recorded in the office of the register of deeds for the county of Mackinaw, to which county said county of Cheboygan was *was* attached for judicial and other purposes, and the records were subsequently transcribed into the books of the register of deeds for the county of Cheboygan, to which several deeds and the several records thereof, and to certified copies thereof, your orator prays leave to refer for greater certainty, and prays that the same may be taken as a part of this, his bill.

Seventh. Your orator further shows that he has never been able to discover that the said Bela Chapman ever, except as hereinafter stated, made any conveyance of said premises other than said mortgage to said Scott; that said Chapman for years resided near said premises; that never having taken possession thereof he knew that Scott and others were in open and notorious possession and claimed the same adversely to him through and under assignment of said Scott to
6 said Sammons of said mortgages and the several deeds hereinbefore referred to; that said Chapman never claimed any title to said premises; that he not only drew several warranty and quitclaim deeds of said premises, witnessed the same and others, and as a notary public took the acknowledgment thereof, without giving any notice of any claim, if any he had, on said premises, and through which your orator claims title.

Eighth. Your orator alleges and submits that he was the legal and equitable owner of said premises, and he was in the actual possession thereof until he entered into a contract hereinafter mentioned to convey the same to the defendants Hurds and Smith. That even if said Chapman had any legal or equitable right or title to the same, the same barred by the several statutes of limitations of this State.

Ninth. Your orator further shows that on or about the seventh day of June, 1872, the defendants, Charles A. Hurd, Hiram D. Hurd, and David Smith, applied to your orator to purchase said premises, and your

orator proposed to sell the same to them for eight thousand dollars, and which the same were worth, which proposition they accepted, and your orator employed one Watts S. Humphrey, of Cheboygan, an attorney-at-law, duly admitted to practice as such, who was then and for a long time prior thereto had been the attorney of your orator, to draw a contract of sale of said south part of said lot then owned by your orator to said Hurds and Smith; that said Humphrey did draw such contract, by which your orator agreed to execute and deliver to them a warranty deed of said premises, and the same was signed by the duly authorized agent of your orator and by said Hurds and Smith, and the same was then subscribed by said Watts S. Humphrey as witness thereto; that afterwards your orator paid said Humphrey his charges for drawing such contract, and thereupon said Hurds and Smith entered into the actual possession of said premises and are still in the actual possession thereof.

7

Tenth. Your orator further shows that soon after said Hurds and Smith, defendants, entered into possession of said premises they employed said Watts S. Humphreys as an attorney to procure an abstract of the title to said premises, and to search the title and ascertain the situation thereof, and report the same to them, Hurds and Smith. The result of such search that said Humphrey undertook the said employment and discovered that there was not any deed of record from said Bela Chapman, and that the legal title appeared to be in him; thereupon he communicated such information and of said contract to John Atkinson, esq., an attorney-at-law residing at Detroit, who then happened to be at Cheboygan; and they, as your orator believes and charges the facts to be, conceived the plan of not only defeating your orator's title and contract entered into with said Hurds and Smith, they also for the purpose of defeating the purchase made by said Hurds and Smith, the clients of said Watts S. Humphrey, proceeded to Mackinaw, where said Chapman resided, and with the purpose, as they represented to said Chapman, of perfecting the title in their clients in and who they pretended had purchased said premises induced said Chapman, on the tenth day of June, 1872, to execute a quitclaim deed of the whole of said southwest part of the southwest quarter of section 29, town. 38 north, range one west, to George P. Humphrey, the defendant, who was the brother of said Watts S. Humphrey.

Eleventh. That the taking of such deed to said George P. Humphrey was without his knowledge or consent when the same was executed; he had no knowledge thereof for a long time afterwards; that said deed was drawn by said Atkinson, and he and said Watts S. Humphrey conducted the whole business in procuring said deed, and after the same was executed they or one of them paid said Chapman the sum of twenty-five dollars therefor; that when they applied to said Chapman for said deed he informed them that he had not nor did claim to have any right, title, or interest in and to said premises.

8

Twelfth. That said Watts S. Humphrey and John Atkinson having procured said deed they caused the same to be recorded in the office of the register of deeds for Cheboygan County, in book D of deeds, page 143, and to which record or a certified copy thereof your orator prays leave to refer, and they then commenced a suit in ejectment in favor of said George P. Humphrey against said defendants Hurds and Smith, in the circuit court for the county of Cheboygan, to recover said premises, and which suit is still pending undetermined; that the name of Watts S. Humphrey appears in and on the said declaration by which said suit

was commenced as the attorney, and said John Atkinson acts as counsel for said plaintiff.

Thirteenth. Your orator further shows that said George P. Humphrey claims that by virtue of said deed from said Chapman he is the owner of said premises, which is a great injury and damage to your orator, and that he will persist in prosecuting said suit; that your orator applied to said defendants Hurds and Smith to institute proceedings, as your orator claims it was their right and duty to claim that said deed of said Chapman to said defendant, George P. Humphrey, enured to their benefit; that they refuesd so to do, as also to take any steps or proceedings at law or equity in relation thereto.

Fourteenth. Your orator further shows that he on the 6th day of January, 1873, tendered and is ready and willing to pay the said George P. Humphrey the sum of twenty-five dollars, and also offered to pay
9 him any further sum that he paid said Chapman, and also the costs and expenses, if any incurred in procuring said deed, which he refused. Your orator submits that he was and is entitled to all benefit to be derived from said deed; that said Hurds and Smith are also entitled to the benefit thereof to maintain and support the title which they contracted for with your orator. That your orator has made several offers and attempts to procure a release from said George P. Humphrey of his pretended rights to raid premises, all of which have been fruitless.

Fifteenth. To the end therefore that the defendants, if they can, shew why your orator should not have the relief hereby prayed, may without oath, the same being hereby waived, according to the best and utmost of their several and respective knowledge, information, and belief, full, true, direct, and perfect answer make to all and singular the matters and things hereinbefore stated.

Sixteenth. That it may be ordered and decreed the deed so executed by said Bela Chapman to said George P. Humphrey to have been obtained by him fraudulently, and for the use and benefit of your orator.

Seventeenth. That the said George P. Humphrey be ordered and decreed to make, execute, and deliver to your orator a release and quit-claim of all the right, title, and interest in and to said premises which he acquired by such deed of such form and upon such terms and conditions as shall be proper and equitable.

Eighteenth. That the said George P. Humphrey, and his attorneys, solicitors, and agents, be perpetually enjoined from making any conveyance of said premises, and the said Humphrey, Hurds, and Smith from setting up or doing any act or thing claiming any title through such deed of said Chapman, and from prosecuting the said suit of ejectment or any other suit to recover possession of said premises thereby.
10 That your orator may have such other or further relief in the premises as shall be just and equitable, and be awarded his costs in this behalf.

Nineteenth. May it please the court to grant to your orator the writ of subpœna of this court, under the seal thereof, commanding the said George P. Humphrey, Charles A. Hurd, Hiram D. Hurd, and David Smith, defendants, to appear in this court, and to abide by and perform the decree of the court herein.

SANFORD BAKER,
By D. C. HOLBROOK,
His Agent and Solicitor.

D. C. HOLBROOK,
Sol'r & Counsel for Compl't.

I acknowledge myself security for complainant, and agree to pay all costs which shall be adjudged against him in this cause.

D. C. HOLBROOK.

JAN'Y 6, '73.

Filed in clerk's office Jan'y 6, 1873.

A. MANDELL, *Clerk.*

11 *Subpœna.*

Chancery subpœna.

Circuit court of the United States of America for the sixth circuit and eastern district of Michigan, sitting in chancery.

The President of the United States of America to George P. Humphrey, Charles A. Hurd, Hiram D. Hurd, and David Smith, who are citizen' of the State and resident' of the eastern district of Michigan:

You are hereby commanded to be and appear in the circuit court of the United States of America for the sixth circuit and eastern district of Michigan sitting in chancery, before the judges thereof, at the district court room, in the city of Detroit, on the first Monday of March next ensuing, then and there to answer unto a bill of complaint exhibited against you as defendants by Sanford Baker, who is a resident of the Province of Ontario, an alien, and a subject of the Queen of Great Britain and Ireland, as complainant. And this you shall in no wise omit, under the penalty of one thousand dollars.

Witness, the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this sixth day of January, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States the ninety-seventh.

SEAL OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE EAST DIST. MICH.

ADDISON MANDELL, *Clerk.*

MEMORANDUM.—The above-named defendants are required to enter their appearance in this suit with the clerk of this court, at his office in the city of Detroit, on or before the day to which this writ of subpœna is returnable, otherwise the bill of complaint in this cause will be taken pro confesso against said defendant.

ADDISON MANDELL, *Clerk.*

EASTERN DISTRICT OF MICHIGAN, *ss:*

DETROIT, *Jan'y 6th*, 1872.

I hereby authorize and depute George Robbins to serve the within subpœna and due return make according to law.

JOS. R. BENNET, *U. S. Marshal E. Dist. of Mich.*

12 EASTERN DISTRICT OF MICHIGAN, *ss:*

I hereby certify and return, that on the eleventh day of February, A. D. 1873, I served the within writ on George P. Humphrey, and on the 17th day of February, 1873, I served the within writ on David Smith, Hiram D. Hurd, and Charles A. Hurd, defendants within

named, at Cheboygan, in said district, by showing to each of them the original writ and delivering to each of them a true copy thereof.

GEORGE ROBBINS.

Returned and filed in clerk's office May 19, 1873.

A. MANDELL, *Clerk.*

13 The circuit court of the United States for the eastern district of Michigan. In equity.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, IMPLEADED WITH Charles A. Hurd, and Hiram D. Hurd, and David Smith.

Please enter the appearance of the defendant Humphrey, by Trowbridge & Atkinson as his solicitors, in the above-entitled cause.

TROWBRIDGE & ATKINSON,
Solicitors and of Counsel for Def't Humphrey.

To ADDISON MANDELL, Esq.,
Clerk of said Court.

Filed in clerk's office March 10th, 1873.

A. MANDELL, *Clerk.*

14 SANFORD BAKER, COMPLAINANT,
vs.
GEORGE P. HUMPHREY, IMPLEADED WITH Charles A. Hurd, Hiram D. Hurd, & David Smith, defendants. In equity.

MARCH 10, 1873.

On filing precipe in this cause, and on motion of Trowbridge and Atkinson, solicitors for defendant Humphrey, it is ordered that the appearance of said defendant by them as his solicitors, be and the same is hereby entered.

Entered by order of—

TROWBRIDGE & ATKINSON,
Sol'rs for Def't Humphrey.
Pr. A. MANDELL, *Clerk.*

15 The circuit court of the United States for the eastern district of Michigan.

SANFORD BAKER, COMPLAINANT,
vs.
GEORGE P. HUMPHREY, CHARLES A. HURD, Hiram D. Hurd and David A. Smith, defendants.

The answer of the defendant Humphrey to the complainant's bill.

This defendant, saving and reserving to himself all benefit of exception to the complainant's bill, for answer thereto respectfully state:

First. He admits the first article of complainant's bill.

Second. He admits that William Scott was on the 27th day of February, 1851, owner of the premises in question, and his conveyance to Bela Chapman as stated.

Third. He admits that Bela Chapman executed a mortgage thereon to said Scott, but he denies that it was to secure the purchase price of said premises, and alleges that it was to secure the performance of a lumbering contract between said Chapman and said Scott, on said Chapman's part.

Fourth. He denies that said Chapman never took possession, and he denies that said Scott and those claiming through and under him took possession and have since the giving of said mortgage been in the actual possession of the whole or any part of said premises, claiming to be the sole owners thereof, and he alleges and claims that if said Scott remained in possession after the giving of said deed to said
16 Chapman, he and those claiming under him are estopped by said deed from claiming said premises adversely to said Chapman.

Fifth. He is not informed as to the matters stated in the fifth article of complainant's bill, and he therefore neither admits or denies the same, but requires proof thereof.

Sixth. He is not informed, and neither admits or denies the matter alleged in the seventh article of said bill, but requires proof thereof.

Seventh. He denies that said complainant has ever been the legal or equitable owner of said premises; and he denies that said Chapman's title to the same is barred.

Eighth. He admits the making of the contract between the complainant and the other defendants, but denies that said complainant employed said Watts S. Humphrey to draw the same, or that said Humphrey was then or had been the attorney of said complainant, and he alleges that said Humphrey was employed by said Hurds and Smith to draw said contract, and was presented by said Hurds and Smith with an abstract prepared and furnished them by said complainant from which to get the description of said premises; that said complainant's agent afterwards, upon the question arising between him and said Hurds and Smith as to who should pay for said contract, directed Humphrey to charge it to the complainant; but he denies that said complainant has ever paid the amount charged, or any part thereof.

Ninth. He denies the facts stated in the tenth article of said bill, but admits that Chapman conveyed said premises to the defendant, and claims that he did so for a valuable consideration paid be (by) this defendant for the same, and that this defendant the same from said Chapman in good faith, and believing him to be, as he alleges he was until said conveyance, the legal and equitable owner of said premises.
17 Tenth. He admits that at the moment when said deed was taken he had no knowledge thereof, but alleges that said Watts S. Humphrey had full authority to act for him. He admits that the deed was drawn by John Atkinson, and he denies that said Chapman informed them that he had no title, but avers that he claimed to be the owner of said premises under said deed from said Scott. And he denies that price was paid said Chapman by said Watts S. Humphrey, as the attorney or agent of this defendant.

Eleventh. He admits the recording of the deed and the commencement of an ejectment suit by this defendant against Hurds and Smith, and that the same is now pending and undetermined, and he claims that the title to said premises is properly triable in said suit.

Twelfth. He admits that he claims to own said premises under said deed from said Chapman, and he denies that said complainant or said

Hurds and Smith have any right in law or equity under said deed, and he admits that he has refused and still refuses to convey the same to said complainant.

Thirteenth. And this defendant submits that said complainant has not in and by his said bill made or stated such a case as entitles him to the relief prayed, or any relief. And he prays he may have the same benefits as if he had demurred to said bill.

Fourteenth. And this defendant prays to be here dismissed, with his reasonable costs and charges by him about this suit most wrongfully sustained.

And he will ever pray.

GEORGE P. HUMPHREY,
Defendant.

TROWBRIDGE & ATKINSON,
Sol's & of Counsel for Def' Humphrey.

18 Filed in clerk's office March 27th, '73.

A. MANDELL, *Clerk.*

19 *Replication.*

The circuit court of the United States for the eastern district of Michigan. In chancery.

The replication of Sanford Baker, complainant, to the answer of George P. Humphrey, impleaded with Charles A. Hurd and others, defendants:

This repliant, saving and reserving to himself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be taken to the manifold insufficiencies of the said answer, for replication thereunto say, that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the law to be answered unto; and that the said answer of said George P. Humphrey, uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatever, in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

D. C. HOLBROOK,
Solicitor for Complainant.

20 Filed April 19th, 1873.

A. MANDELL,
Clerk.
By JNO. CRAVER,
Dep'y.

21, 22 In the circuit court of the United States for the eastern district of Michigan. In equity.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, CHARLES A. HURD, Hiram D. Hurd and David Smith.

The clerk of the above court will please enter our appearance in this

cause, and we do not require service of notice of any proceedings in this cause, and no costs or expense to be adjudged against us in this case.

CHAS. A. HURD.
HIRAM D. HURD.

DETROIT, *February* 13, 1873.

Filed in open court, May 19th, 1873.

A. MANDELL,
Clerk.

23, 24 Circuit court of the United States for the eastern district of Michigan. In equity.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, CHARLES A. HURD, Hiram D. Hurd & David Smith.

The subpœna issued on this cause having been returned personally served on the defendants, and the def'ts Charles A. Hurd and Hiram D. Hurd having entered their appearance and failed to answer within the time required by the rules of this court, and the defendant Humphrey having filed an answer, on motion of D. C. Holbrook, sol'r for complainant, it is ordered that the default of the defendants, Charles A. Hurd, Hiram D. Hurd, and David Smith is now entered and the bill taken as confessed by them.

D. C. HOLBROOK,
Sol'r for Compl't.

MAY 19, '73.

Filed in open court May 19, 1873.

A. MANDELL,
Clerk.

25, 26 United States circuit court, eastern district of Michigan.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY.

The above cause will be brought on for trial at the next term of this court, notice having been served on the part of the def'ts on D. C. Holbrook, attorney for the pl'ff, according to the statute and rules of this court. You will please place said cause on the issue docket of this court for said term. A jury is demanded.

TROWBRIDGE & ATKINSON,
Attorneys for Def't.

To the clerk of said court.

Filed in clerk's office, Feb'y 19, 1874.

A. MANDELL,
Clerk.

27 In the circuit court of the United States for the eastern district of Michigan. In equity.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, CHARLES A. HURD, Hiram D. Hurd and David Smith.

STATE OF MICHIGAN,
County of Wayne, ss:

Dewitt C. Holbrook, of the city of Detroit, in said county and State, being duly sworn, doth depose and say:

That he is the solicitor for the complainant in the above-entitled cause, and that in his behalf he makes this affidavit.

That as such he filed the bill in this cause. That from an examination of the papers of record therein referred to as conveyances of the premises described in said bill and of deeds not recorded which this deponent has examined, he verily believes that the conveyances stated in said bill actually existed, and the title to said premises affected by each of them. That he has acted as counsel in two trials in the circuit court for the county of Cheboygan of the suit in ejectment mentioned and set forth in said bill between the said George P. Humphrey, defendant, and said Hurds and Smith.

That on one of said trials the said George P. Humphrey was personally sworn, and said Watts S. Humphrey was sworn on both of said trials. That from the knowledge acquired by this deponent of the facts and matters, statements and allegations contained in said bill, he verily believes said bill to be true, and the matters therein contained to be fairly and truthfully set forth.

28 That the first trial of said George P. Humphrey versus said Hurds and Smith was commenced on the 5th day of June, 1873. After the examination of many witnesses and certain facts appearing in evidence and which were uncontradicted, a verdict was rendered in favor of the defendants against the plaintiff under the charge of the court and direction thereof. That thereupon a judgment was rendered upon such verdict in favor of the defendants, and the said George P. Humphrey caused the same to be removed to the supreme court of this State on a bill of exceptions and writ of error. That said judgment was reversed by the supreme court of the State of Michigan, at the January term of 1874, and said cause was remitted to the circuit court for Cheboygan County for a new trial. That such judgment was set aside and an order for a new trial entered in said court, as this deponent believes, at the June term thereof, in 1874, and the second or new trial thereof was had in the month of August last That after the examination of many witnesses, the plaintiff conceding certain facts in relation to the matter in issue, the court then charged the jury that the plaintiff could not recover and the jury again rendered a verdict under the direction of the court in favor of the defendants, and a judgment entered accordingly with leave to the plaintiff to present a bill of exceptions for the purpose of again removing the same to said supreme court, and such bill of exceptions has been prepared and served upon this deponent.

That deponent believes the same evidence given on said last trial is material and relevant to the issue in the case in this court.

That after the judgment in June, 1873, and while said cause was pending in the supreme court, in a conversation with John Atkinson, esq.
29 in relation to taking the proofs in this cause, it was not con sid

ered necessary by either to proceed therewith, but to await the decision of the supreme court, for the reason that if the judgment below should be affirmed, the controversy would be in effect ended.

That after such decision of the supreme court it was almost impossible from the distance of the place of holding of this court for such testimony to be taken, being at Cheboygan, Michigan, and being at that season of the year when many of said witnesses would be engaged at different places, this deponent suggested to said Atkinson that it would be a great saving of time and labor by agreeing that the testimony introduced at the next trial of said Humphrey against said Hurds and Smith which was expected to come on last June, should, so far as the same was applicable, be stipulated to be used in this court in this cause.

That this deponent was unable to attend the June term in Cheboygan County, and a copy of the order of reversal of the supreme court not having been filed in said circuit court for Cheboygan County, the cause was continued until last August.

That this deponent from what said Atkinson said believed he agreed to such suggestion.

That prior to the commencement of the August term of said court in Cheboygan, this deponent saw said Atkinson and made a suggestion to him again to use the testimony taken on the trial of said ejectment suit as aforesaid, to which said Atkinson consented, with the condition that deponent should procure an order extending the time for taking the proofs in this cause.

That in pursuance thereof this deponent engaged Charles Flowers, a stenographer, residing in the city of Detroit, to attend the trial of said ejectment suit and take notes of the evidence, and for which services this deponent paid said Flowers fifty dollars.

That it is now understood between said Atkinson and this deponent that the testimony of the witnesses so taken may be used on the hearing of this cause, provided the time for taking proofs be extended.

This deponent further says that he has made personal inquiries and he has not been able to learn of any person residing in Cheboygan not engaged in this cause competant to act as a commissioner. That there are many persons residing in Cheboygan, in addition to those sworn on said ejectment trial, whose testimony is material and important on the hearing of this cause, and without which this complainant cannot fully make out his case, and whose materiality was not known or discovered until after the trial of said ejectment case in August last.

This deponent further says that he would have proceeded with the examination of witnesses in the usual manner and practice of this court had it not been for the pendency of said action of ejectment and the understanding with said Atkinson.

D. C. HOLBROOK.

Subscribed and sworn to before me this 17th day of September, 1874.

GEO. E. WASEY,
Notary Public, Wayne Co., Mich.

Filed in clerk's office Sept. 18, 1874.

A. MANDELL, *Clerk.*

31 In the circuit court of the United States for the eastern district of Michigan. In equity.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, CHARLES A. HURD, Hiram D. Hurd, and David Smith.

SEPT. 18th, 1874.

And now comes the said complainant, by D. C. Holbrook, his solicitor, and moves the court that an order be entered in this cause extending the time for the taking of proofs therein, which motion is based on an affidavit and the bill, answer and files in this cause.

D. C. HOLBROOK,
Sols. for Compl't.

Entered and filed in clerk's office Sept. 18th, 1874.

A. MANDELL, *Clerk.*

32

33 In the circuit court of the United States for the eastern district of Michigan. In equity.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, CHARLES A. HURD, Hiram D. Hurd, and David Smith.

EASTERN DISTRICT OF MICHIGAN, *ss:*

GEORGE E. WASEY, of the city of Detroit, being duly sworn, says That he is a clerk in the office of D. C. Holbrook, the solicitor for the complainant in the above cause; that on the 18th day of September, 1874, he served upon John Atkinson, esq., one of the solicitors for the above named defendant, a copy of the motion entered in the motion-book of this court, together with a copy of the affidavit upon which the same is based, the original of which motion and affidavit are on file therein, and also a notice that said motion, based on said affidavit and the files and records in said cause. *and* would be brought for argument at the opening of court on the 5th day of October, 1874, or as soon thereafter as counsel could be heard; that said service was so made by leaving the same in the office of said Atkinson, with the person in charge thereof; that deponent neglected to keep a copy of said notice.

And further saith not.

GEO. E. WASEY.

Subscribed and sworn to before me this 5th day of October, 1874.

ED. E. KANE,
Notary Public, Wayne Co., Mich.

Filed in open court Oct. 5th, 1874.

A. MANDELL, *Clerk.*

34 At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court-room in the city of Detroit, on Monday, the fifth day of October, in the year one thousand eight hundred and seventy-four.

Present, Honorable John W. Longyear, district judge.

SANFORD BAKER, COMPLAINANT,
vs.
GEORGE P. HUMPHREY, HIRAM D. HURD, et al. } 1631. In equity.

On motion of complainant, by D. C. Holbrook, his attorney, and on reading and filing affidavits of Mr. Holbrook, it is ordered that the time for taking testimony in this cause be and the same is hereby extended sixty days from this date; and on like motion it is ordered that William H. Maltby, of Cheboygan, in this district, be and he is hereby appointed a special examiner, under rule 67 of the general equity rules of this court, to take such testimony.

35 The United States circuit court for the eastern district of Michigan. In equity.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, HIRAM D. HURD, Charles A. Hurd, and David Smith.

We hereby consent that Mess. Atkinson, Hawley & Atkinson be substituted in our place as attorneys for the defendant, George P. Humphrey, in the above-entitled cause.

TROWBRIDGE & ATKINSON,
Att'ys for Def'd't Humphrey.

Filed in the clerk's office Oct. 9th, 1874.

A. MANDELL, *Clerk.*

36

37 The United States circuit court for the eastern district of Michigan. In equity.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, HIRAM D. HURD, Charles A. Hurd, and David Smith.

On reading and filing a consent in writing, signed by Trowbridge & Atkinson, attorneys for the above named defendant, George P. Humphrey, and on motion of Atkinson, Hawley & Atkinson, ordered that the said Atkinson, Hawley & Atkinson be substituted in the place of the said Trowbridge & Atkinson as attorneys for the said defendant George P. Humphrey.

ATKINSON, HAWLEY & ATKINSON,
Att'ys for Defendant Humphrey.

Filed in the clerk's office October 9th, 1874.

A. MANDELL, *Clerk.*

38

39 Circuit court of the United States for eastern district of Michigan.
In equity.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, CHARLES A. HURD, Hiram D. Hurd, and David Smith.

SIR: Please take notice that the defendant Humphrey desires the evidence to be adduced in this cause to be taken orally.

Yours, &c.,

ATKINSON, HAWLEY & ATKINSON,
Solicitors for Def'd't Humphrey.

D. C. HOLBROOK, Esq.,
Solicitor for Complainant.

DETROIT, *Nov.* 19, 1874.

Filed in clerk's office Nov. 21, 1874.

A. MANDELL, *Clerk.*

40

41 In the circuit court of the United States for the eastern district of Michigan. In chancery.

SANFORD BAKER, COMPL'T,
vs.
GEORGE P. HUMPHREY, HIRAM D. HURD, Charles A. Hurd, and David Smith, def'd'ts.

SIR: Please take notice that on Monday, the 21st day of December, 1874, at the opening of said court, or as soon thereafter as counsel can be heard, we shall make a motion in said cause, a copy of which, with the affidavits upon which the same is based, is hereto attached.

ATKINSON, HAWLEY & ATKINSON,
Sol'rs for Def'd't Humphrey.

To D. C. HOLBROOK, Esq.,
Compl't Solr.

42

43 In the circuit court of the United States for the eastern district of Michigan. In equity.

SANFORD BAKER
vs.
GEORGE A. HUMPHREY, CHARLES A. HURD, Hiram D. Hurd, and David Smith.

Now comes the said defendant, George P. Humphrey, by Atkinson, Hawley & Atkinson, his solicitors, and moves the court now here that an order be entered in this cause extending the time for taking the proofs therein, for the reasons set forth in the affidavit now filed in support of the motion.

ATKINSON, HAWLEY & ATKINSON,
Sol'r for Def'd't Humphrey.

Dated Dec. 12, 1874.

44

45 In the circuit court of the United States for the eastern district of Michigan. In equity.

SANFORD BAKER
vs
GEORGE P. HUMPHREY, CHARLES A. HURD, Hiram D. Hurd, and David Smith.

STATE OF MICHIGAN,
Eastern District of Michigan, Wayne County, ss:

John Atkinson, being duly sworn, says that he is one of the solicitors for said defendant, Humphrey, in this cause, and knows well the facts on which this cause depends, and the nature of said Humphrey's defence.

Deponent further says that he has fully consulted with said defendant and with Watts S. Humphrey, esq., of Cheboygan, in this State, as to said defence, and he has been fully informed by them as to the testimony they would give in this cause.

Deponent further says that said defendant and said Watts S. Humphrey are material and necessary witnesses for said defendant Humphrey in this cause, and without whose testimony he cannot safely proceed to hearing.

Deponent further says that the taking of the testimony of said defendant, of said Watts S. Humphrey, and of other witnesses in this cause, was appointed for the 30th day of November, ult., before Addison Mandell, esq., in Detroit; but that said Watts S. Humphrey was prevented from attending at that time by severe sickness, which confined him to his house, and that said George P. Humphrey was prevented from attending by the severe illness of his wife, which rendered it unsafe for him to leave home.

Deponent further says that said defendant and said W. S. Humphrey were notified in time to be present at the taking of said testimony
46 on said 30th day of November, and that deponent's knowledge of the causes which prevented their attendance is derived from a telegram received by him from said W. S. Humphrey, dated Cheboygan, November 29th.

Deponent further says that he had sent for certified copies of some important documentary testimony in behalf of said defendant Humphrey, which he did not receive in time to offer on said 30th day of November, but which he has since received and has now ready.

Deponent further says that up to this time no notice has been received by the solicitors for said defendant Humphrey for taking testimony in said cause on behalf of said complainant, and so far as he knew, until to-day, no notice whatever had been given for taking such testimony. That he learned by mail to-day from Cheboygan that complainant has been taking testimony under some order of this court, of which he has had no notice, and upon some notice served upon the defendant personally, at Cheboygan, in this State. That it therefore becomes necessary for the defendant to take testimony in the cause.

JOHN ATKINSON.

Subscribed and sworn to before me this 12th day of December, 1874.
[SEAL OF NOTARY PUBLIC.] ELMER S. B. SUTTON,
Notary Public, Oakland Co., Michigan.

Filed in clerk's office, Dec. 16, 1874.

A. MANDELL, *Clerk.*

47 Cir. ct. U. S. eastern district Mich. Equity.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY ET AL.

On the petition of defendants I consent that the time to take proofs in this case be extended sixty days from 21 Dec., 1874.

D. C. HOLBROOK,
For Compl't.

DEC. 19, 1874.

Filed Dec. 19, 1874.

A. MANDELL, *Clerk.*

48

49 In the circuit court for the United States for the eastern district of Michigan. In equity.

SANFORD BAKER, COMPL'T,
vs.
GEORGE P. HUMPHREY, HIRAM D. HURD, Charles A. Hurd, and David Smith, def'ts.

To the above-named complainant:

Please take notice that Archibald P. Newton, Medard Metivier, Chauncey Stevenson, Moses W. Horne, William McArthur, Francis W. Sammons, John Vincent, Watts S. Humphrey, David Smith, and George P. Humphrey are material witnesses and that their testimony is required for the defendants in this cause; and that they reside in the county of Cheboygan, in this State, more than one hundred miles from the place of trial of this cause; and that the depositions of said witnesses will be taken before Samuel H. Taylor, esq., a notary public in and for the county of Cheboygan, at his office in the village of Cheboygan, in the county of Cheboygan, in this State, to be used as evidence on behalf of the defendants on the trial of this cause on Friday, the twelfth day of February, A. D. 1875, at 10 o'clock in the forenoon of said day, at which time and place you are required to appear and put such interrogatories to said witness as you may think fit. The ground of taking this deposition appears in the affidavit of John Atkinson hereto attached.

Yours, &c.,

ATKINSON, HAWLEY & ATKINSON,
Attorneys for Def't Humphrey.

Dated Detroit, Jan. 30th, A. D. 1875.

50 EASTERN DISTRICT OF MICHIGAN,
Wayne County, ss:

John Atkinson, being duly sworn, says that the within named witnesses reside in the village of Cheboygan, in the county of Cheboygan, in this State, more than one hundred miles from Detroit, in the county of Wayne, in said district, the place of trial of the within-entitled cause; and that they are material and necessary witnesses for the defendants in this cause.

JOHN ATKINSON.

Sworn to and subscribed before me this 30th day of January, A. D. 1875.

ELMER G. B. SUTTON,
Notary Public, Oakland Co., Mich.

EASTERN DISTRICT OF MICHIGAN,
Wayne County, ss:

John Atkinson, being duly sworn, says that he is one of the solicitors for the defendants in the within-entitled cause, and that the above and foregoing are duplicates of the original notice to take the deposition of the within-named witness, and of the affidavit showing the ground for taking such deposition.

JOHN ATKINSON.

Sworn to and subscribed before me this 30th day of January, 1875.
ELMER G. B. SUTTON,
Notary Public, Oakland Co., Mich.

51 STATE OF MICHIGAN,
Wayne County, ss:

John G. Hawley, being duly sworn, deposes and says that he did on the second day of February, 1875, serve a verified copy of the original notice to take the deposition of the within-named witness in the within-entitled cause, and of the affidavit on which the same is based, of which said verified copy and of the verification thereof the within and foregoing is a true copy, on D. C. Holbrook, esq., the solicitor for the complainant, by delivering the same to him personally.

JOHN G. HAWLEY.

Sworn to and subscribed before me this 2nd day of February, 1875.
ELMER G. B. SUTTON,
Notary Public, Oakland Co., Mich.

52 The circuit court of the United States of America. In equity.

STATE OF MICHIGAN,
County of Cheboygan, ss:

SANFORD BAKER, COMPL'T,
vs.
GEORGE P. HUMPHREY, HIRAM D. HURD, Charles A. Hurd, and David Smith, det'ts.

Be it remembered that on Friday, the twelfth day of February, A. D. 1875, I, Samuel H. Taylor, a notary public in and for the county of Cheboygan, in the State of Michigan, and duly commissioned and qualified under the laws of the United States to take depositions for use in the circuit courts of the United States, did call and cause to be and personally appear before me, at my office at Cheboygan, in said county, State, and district, Archibald P. Newton, Medard Metivier, Chauncey Stevenson, Moses W. Horne, William McArthur, and David Smith, to testify and the truth to say on the part and behalf of the defendants in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the eastern district of Michigan, in equity, at Detroit, in said district, wherein Sanford Baker is plaintiff and George P. Humphrey, Hiram D. Hurd, Charles A. Hurd, and David Smith are defendants.

And the said ARCHIBALD NEWTON, being of the age of sixty
53 years and upwards, and having by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, did depose, testify, and say as follows:

My name is Archibald P. Newton, and upwards of sixty years of age, and reside in the village of Cheboygan; my occupation is a merchant, and am acquainted with the parties to this suit. I know the land in controversy in this suit, known as the old mill property at the mouth of the Cheboygan River; have known this property at the least twenty-five years. For the last twenty years this property has been a common till within the last five or six years. Since some time in the year 1854 or 1855 I have used it myself for dockage, for wood, posts, and cedar at different times within the past fifteen years; have never paid rent to anybody nor has anybody claimed rent from me for the use of it; the property to my knowledge has never been enclosed a fence but 'as laid as an open common until purchased by Hurds and Smith; if it had been enclosed I should have been apt to have known it.

ARCHIBALD P. NEWTON.

Subscribed and sworn to before me this 12th day of February, A. D. 1875.

SAMUEL H. TAYLOR,
Notary Public.

And the said MOSES W. HORNE, being of the age of fifty-four years and upwards, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, did depose, testify, and say as follows:

My name is Moses W. Horne; my age, fifty-four years and
54 upwards; my occupation, real estate dealer, and reside in the village of Cheboygan. I am acquainted with the parties to this suit, and know the land in controversy in this suit known as the old mill property at the mouth of the Cheboygan River. I have known the property about twenty-eight years; for the past twenty years the most of the time it has been unoccupied; it has been an open common for the last twenty years, with the exception of about three years; one year some one put a fence up and pastured it; after that the fence was allowed to go down, and was an open common from that time until the year 1872 when Hurds and Smith (defendants in this case) took possession of it; anybody used the property that had a mind to; it was an open common.

MOSES W. HORNE.

Subscribed and sworn to before me this 12th day of February, A. D. 1875.

SAMUEL H. TAYLOR,
Notary Public.

And the said MEDARD METIVIER, being of the age of fifty-nine years and upwards, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, did depose, testify, and say as follows:

My name is Medard Metivier; my age is fifty-nine years and upwards my occupation, county clerk and register of deeds of Cheboygan County Michigan, and reside at Beaugrand, in Cheboygan County. I am ac-

quainted with the parties to this suit. I know the property in controversy in this suit, known as part of the old mill property at the mouth of the Cheboygan River; I have known this property over twenty years. The mill was running when first I came here over twenty years ago.

55 For the most of the time for the last twenty years this land has been an open common. In 1859 I moved from Cheboygan to Mackinaw. In 1860 and 1861 I ran a boat between Mackinaw and Cheboygan, and used to come to Cheboygan as often as two or three times a week, and used to land my boat adjoining this land, and during these years this land was an open common. In 1855 I had just finished a hotel known as the Cheboygan House adjoining this land in question on the south; I lived in this house and kept hotel until I moved to Mackinaw late in the fall of 1859; I used to see this land almost every day; during this time this land was unenclosed and open common; nothing was done on it, only everybody's cattle pastured on it.

MEDARD METIVIER.

Sworn and subscribed to before me this twelfth day of February, A. D. 1875.

SAMUEL H. TAYLOR,
Notary Public.

And the said CHAUNCEY STEVENSON, being of the age of forty-three years and upwards, and having been by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, did depose, testify, and say as follows:

My name is Chauncey Stevenson; my age is forty-three years and upwards; my occupation carpenter and joiner and real estate dealer; and my residence is Cheboygan Village. I am acquainted with the parties to this suit, and know the land in question, known as a part of the old mill property at the mouth of the Cheboygan River. I have known the property twenty-four years; this property has been a vacant, open common for the most of the time for the past twenty-four years. I think a man by the name of Averill pastured it for a part of one year.

56 Since about the year 1855 or 1856 this land has been an open common, with the exception of Averill pasturing it for a part of one season, until Hurds and Smith took possession of it in the year 1872; it was unenclosed and a part of the time under water during high water time, and no one in possession claiming to own or have charge of the same; anybody used it as had a mind to; it was in this condition for twelve or fifteen years previous to the year 1872, when Hurds and Smith took possession of it.

CHAUNCEY STEVENSON.

Sworn to and subscribed before me this twelfth day of February, A. D. 1875.

SAMUEL H. TAYLOR,
Notary Public.

And the said WILLIAM MCARTHUR, being of the age of forty-nine years, and upwards, and having been by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, did depose, testify, and say as follows:

My name is William McArthur; my age is forty-nine years and upwards, and reside in the village of Cheboygan, and my occupation is a

lumberman. I am acquainted with the parties to this suit. I know the land in controversy in this suit, being and described as follows: A piece of land lying on the west side of the Cheboygan River, being twenty-eight rods wide on the Cheboygan River, and running the same width westerly across the whole of lot 3, in section 29, town. 38 north, of range one west. I have known the land since about the month of June or July, 1866. I don't know that the land was occupied in any manner when I first knew it. I purchased an interest in this property, together with a large tract of land from Lucius Southwick, in September,
57 1866. The lands in question in this suit were sold to Baker, Thompson and Patterson within a month from the date of my purchase. I don't know of anybody occupying it during the remainder of 1866 or 1867; the first occupation I remember of it was by the parties we sold to for storing boom stuff. I think in the year 1868; the land was not enclosed at the time I purchased; the land was in the same condition when we sold to Baker, Thompson and Patterson. Mr. Brannock built a fence which he claimed to be on the south line of this lot some two or three years after our sale to Baker, Thompson and Patterson. I think that some time prior to fencing out this line, Mr. Brannock had a small flat-iron piece fenced off this lot, which he claimed to have bought by a verbal agreement from Baker, Thompson and Patterson; this was the only fence on the land in question up to the time of Hurds and Smith's purchase in 1872. I know of a log building being joined to a frame building occupied by Mr. Brannock at the time of my purchase, and Mr. Brannock showed me where he claimed the south line of this lot to be, which would leave the log house, or the greater part of it, on the lot in question; the lot on which the balance of this building was situate was claimed to be owned by Mr. Brannock.

WM. McARTHUR.

Sworn to and subscribed before me this 12th day of February, A. D. 1875.

SAMUEL H. TAYLOR,
Notary Public.

The examination of witnesses continued to Saturday morning, February 13th, at 10 o'clock a. m.

SAMUEL H. TAYLOR,
Notary Public.

58 SATURDAY, *February 13th*—10 o'clock a. m.

Defendant George P. Humphrey, present, by his attorney, Watts S. Humphrey.

And the said DAVID SMITH, being of the age of forty-nine years and upwards, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, did depose, testify, and say as follows:

My name is David Smith; my age forty-nine years and upwards; my occupation a lumberman, and I reside at Cheboygan, Michigan. I am one of the defendants in this suit, and am acquainted with the other parties to this suit; I am acquainted with Watts S. Humphrey, an attorney-at-law of Cheboygan, and brother of the defendant George P. Humphrey. I know the lands in question in this suit. I, with defendants Hurds, as the firm of Hurds & Smith, purchased the lands from Sanford Baker (complainant in this cause) sometime in the month of June, 1872.

Some time before we made the purchase of Sanford Baker, we employed Watts S. Humphrey to examine the title to this land for us, the firm of Hurds & Smith; said Humphrey made, or caused to be made, an abstract of the title to this land and showed it to them (Hurds & Smith). He stated to us that there was a missing link in the title to Sanford Baker. He, Watts S. Humphrey, said that the title appeared to be in Bela Chapman. This was some two or three months previous to my signing the contract of purchase from Sanford Baker. It was two or three days after Watts S. Humphrey pointed out the defect in the title of complainant before I signed the contract of purchase of this land from complainant. Before signing this contract of purchase from
59 complainant, myself and defendant Hiram D. Hurd went to Watts S. Humphrey's office and notified him that we elected to take the Baker title and told him to draw the contract for the purchase of the same. I think there was no one in possession of the land in question at the time we purchased with the exception that there was some boom stuff belonging to George Roblin and some cedar posts belonging to Sammons and some to Devine. About two weeks after we purchased we took possession of the property; immediately after signing the contract of purchase of this land from complainant, myself and defendant Hiram H. Hurd went to Detroit. During the whole of this negotiation Charles A. Hurd, the other defendant, was in the city of Buffalo, in the State of New York. About one week after this myself and both the defendants Hurds, "I think," returned to Cheboygan. Before our return, and while in Detroit, I learned that George P. Humphrey had purchased the Chapman title to this land in question. Before electing to take the Baker title I asked Watts S. Humphrey if the Chapman title should prove good if we could collect from Baker what we paid him; he (Watts S. Humphrey) informed me that we could recover our purchase money and interest. Baker deeded by warranty deed, and his title failed. We then elected to take the Baker title. I have now no interest in the land in question or in this suit, having sold the same.

DAVID SMITH.

Sworn and subscribed before me this 13th day of February, A. D. 1875.

SAMUEL H. TAYLOR,
Notary Public.

MOSES W. HORNE recalled.

I knew the old log-house, when it was standing, situated partially upon these premises, in question. The south line of the lot in
60 question run through the southwest corner of this old log building. The most of this log building was on the lot in question, and the balance of it was on the land claimed to be owned by Charles Brannock. There was a frame building joined on to this old log building, put up some years after the old log building was; that joined the log building on the south. A small portion of the frame building stood on the premises in question, and the balance on the other side of the line. After the old mill shut down and stopped running, sometime in 1852 or 1853, this old log building was unoccupied for several years; the house was open, and anybody could pass in and out as had a mind to; the people used it as a common village out-house for some years after the mill shut down. I remember Philip Bries occupying the frame part attached to this old log building. I think he did not occupy the log building at this time. I was down there several times while he (Bries) lived there, and the old log building looked, as it always had done, as

though it was unoccupied. The first I know of the old log building being occupied, after the old mill shut down, was when Charles Brannock lived in the frame part, and occupied the frame building as a cooper-shop. I think this was not before 1860.

M. W. HORNE.

Sworn to and subscribed before me this 13th day of February, A. D. 1875.

CHAUNCEY STEVENSON recalled.

I know the log building situate on the south line of the lot in question; the line passed through the southeast corner of it. The old mill on a part of this land in question shut down about the year 1853 or 1854.

The old log-house was vacant and unoccupied for some years after
61 the old mill shut down. The windows and *and* doors were out.

It was in this condition until about 1856 or 1857, and it might have been longer than that. At this time there was no occupation of the lot in question, excepting that Averill pastured it a part of one summer.

CHAUNCEY STEVENSON.

Sworn to and subscribed before me this 13th day of February, A. D. 1873.

SAMUEL H. TAYLOR,
Notary Public.

UNITED STATES OF AMERICA.
Eastern District of Michigan, ss:

I, Samuel H. Taylor, a notary public in and for the county of Cheboygan and State of Michigan, and duly commissioned and qualified under the laws of the United States to take depositions for use in the circuit courts of the United States, do hereby certify that the reason for taking the foregoing depositions is, and the fact is, that the testimony of the said witnesses is material and necessary for the defendants in the cause in the caption of the said deposition named, and that the said witnesses live and did live at the time of taking said depositions in the county of Cheboygan and State of Michigan, the same being at a greater distance than 100 miles from the city of Detroit, where the court at which it is expected the said cause will be tried was appointed by law to be held, to wit, more than 300 miles therefrom.

I further certify that, as appears from the affidavit of John G. Hawley, attached to a sworn duplicate of a notification of the time and place of taking said depositions, which is hereto annexed, was served on D. C. Holbrook, esq., the solicitor for the complainant, to be present at the taking of said depositions and put interrogatories as he may think fit.

62 I further certify that on the 12th day of February, A. D. 1875, I was attend' at my office at Cheboygan, aforesaid, by Watts S. Humphrey, esqr., attorney for George P. Humphrey, one of the defendants, and the witnesses, Archibald P. Newton, Medard Metivier, Chauncey Stevenson, Moses W. Horne, and William McArthur, and on the 13th day of February, A. D. 1875, I was attended by Watts S. Humphrey, attorney for George P. Humphrey, as aforesaid, and the witnesses David Smith, Moses W. Horne, and Chauncey Stevenson, who were of sound mind and lawful age, and the witnesses were by me carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions were by me reduced to writing in the presence of the witnesses, and from their statements, and after reading the same to the witnesses, they subscribed the same in my

presence. I have retained the said depositions in my possession for the purpose of sealing up and directing the same with this certificate, with the reasons aforesaid for taking said depositions, with my own hand to the court for which the same were taken.

And I do further certify that I am not of counsel or attorney for either of the parties in said deposition and caption named, or in any way interested in the event of the said cause named in said caption.

In testimony whereof I have hereunto set my hand this 13th day of February, A. D. 1875.

SAMUEL H. TAYLOR,
Notary Public.

Rec'd from P. O. Feb'y 22nd, 1875, and opened and filed in open court on that day.

A. MANDELL, *Clerk.*

63 In the circuit court of the United States for the eastern district of Michigan. In chancery.

SANFORD BAKER, COMPL'T,
vs.
GEORGE P. HUMPHREY, HIRAM D. HURD, Charles A. Hurd, and David Smith, def'ts.

This cause belongs to the fourth class, and is to be heard on pleadings and proofs, and is entitled to priority from the 29th day of March, A. D. 1873, that being the date at which replication was served. Please enter on the calendar for the next term accordingly.

Dated this 24th day of February, A. D. 1875.

ATKINSON, HAWLEY & ATKINSON,
Solicitors for Def't Humphrey.

To ADDISON MANDELL, Esq.,
Register.

(Endorsed:) Service of notice of hearing this day admitted.
D. C. HOLBROOK.

FEB'Y 24, 1875.

Filed this 23d day of Feb'y, A. D. 1875.

A. MANDELL, *Clerk.*

64 At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district court-room, in the city of Detroit, on Monday, the third day of May, in the year one thousand eight hundred and seventy-five.

Present, Honorable Henry B. Brown, district judge.

SANFORD BAKER, COMPLAINANT,
vs.
GEORGE P. HUMPHREY, CHARLES A. HURD, Hiram D. Hurd, & David Smith, def'ts. } 1631. In equity.

By consent of parties by their respective solicitors, in open court ordered that the hearing of the motion by complainant for an order extending time for taking proofs be postponed until Monday next.

65 In the circuit court of the United States for the eastern district of Michigan. In equity.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, CHARLES A. HURD, Hiram D. Hurd, and David Smith.

The complainant now comes and moves the court for an order extending the time to take proofs in this cause upon the files, records, and proceedings in this cause and the affidavit now filed.

D. C. HOLBROOK,
Sol'r for Compl't.

APRIL 30, 1875.

In the circuit court of the United States for the eastern district of Michigan. In equity.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, ET AL.

To Messrs. Atkinson, Hawley & Atkinson, sol's for def't Humphrey:

Take notice that on Monday, the 3rd day of May next, at the opening of the above court on that day, or as soon thereafter as counsel can be heard, a motion, a copy of which is herewith served, and which motion will be based upon the record, files, and proceedings in said cause, and the affidavit a copy of which is herewith served.

Yours,

D. C. HOLBROOK,
Sol'r for Compl't.

APRIL 30, 1875.

66 In the circuit court of the United States for the eastern district of Michigan. In equity.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, HIRAM D. HURD, Charles A. Hurd, and David Smith.

STATE OF MICHIGAN:
County of Wayne, ss:

DEWITT C. HOLBROOK, of said county and State, being duly sworn, doth depose and say:

That he is the solicitor for the complainant and has had the charge of this suit from its commencement; that said complainant resides in Belleville, Ontario, and is now absent from this State.

That under the order entered in this cause on the 5th day of October, 1874, this deponent went personally to Cheboygan to examine witnesses in this cause.

That George Roblin, of Cheboygan, and Hiram D. Hurd, whom this deponent believed then resided at Cheboygan, and also Watts S. Humphrey, of Cheboygan aforesaid, are material and important witnesses

in this cause on behalf of said complainant, as deponent verily believes; that deponent intended to take the depositions of those persons while there at Cheboygan, but they were absent therefrom; that afterwards, and during the time allowed to take such testimony, the defendants caused to be taken the deposition of George P. Humphrey and two or three other witnesses purporting to be in pursuance of a notice served upon this deponent, of which this deponent has no knowledge, and cannot find the same.

67 That afterwards, and on or about the 15th of December last, the defendants' solicitors gave this deponent notice of an intended application to have the time further extended to take proofs, whereupon this deponent offered to and did sign a stipulation, of which he has not a copy, consenting that the time might be extended, but such stipulation has never been filed, as deponent is informed, with the clerk of this court, and but for what time the time of taking such proof was extended this deponent was unable to state, unless it was for sixty days.

That on the 2nd day of February last this deponent was served with a notice by the solicitors for the defendant Humphrey, that several witnesses would be examined at Cheboygan (which is more than three hundred miles from the city of Detroit) on the 12th day of February following; that deponent employed George E. Wasey to attend said examination on behalf of complainant; that said Wasey left Detroit for that purpose on the 9th day of February, and proceeded about fifty miles beyond Grand Rapids, and was unable to proceed further on account of the snow and storm which blockaded the railroad, and there was no communication with Cheboygan for about three weeks thereafter except by telegraph.

That afterwards the road was constantly obstructed from time to time, and there was no certainty of going or returning.

That deponent is informed and he believes that defendant Humphrey examined several witnesses before Samuel H. Taylor, a notary public at Cheboygan, notwithstanding William H. Maltby, esq., had been duly appointed by this court a special examiner of witnesses in this cause on the 5th day of October, 1874.

This deponent further states that being unable to find Hiram H. Hurd at Cheboygan, and learning that he was then in Buffalo,

68 this deponent wrote him a letter asking him if *if* he would come to Detroit upon a day to be notified; that said letter was not received by said Hurd until about three weeks ago, as he stated to deponent in a letter received from him, and also stating that he was ready to be examined.

That George W. Bell, esq., an attorney at law, residing in Cheboygan, is also a material and important witness for complainant; that said Bell was absent for about three months and did not return until about three weeks since, since which time it has been almost impossible to cross from Petoskey, the terminus of the railroad, to Cheboygan, owing to the bad condition of the roads.

Deponent further states that it is necessary for the complainant to take further proofs in this cause, and particularly to take the depositions of said Watts S. Humphrey, George Roblin, George W. Bell and Hiram D. Hurd, and that the time should be extended to take further proofs for thirty days; that the complainant is anxious to have this cause heard at the next term of this court, and desires the same to be placed on the docket for hearing.

D. C. HOLBROOK.

Subscribed and sworn to before me this 30th day of April, 1875.

GEORGE E. WASEY,
Notary Public, Wayne Co., Mich.

Filed in clerk's office April 30, 1875.

A. MANDELL, *Clerk.*

69 The circuit court of the United States for the eastern district of Michigan.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, CHARLES A. HURD, Hiram D. Hurd, and David Smith.

EASTERN DISTRICT OF MICHIGAN, *ss:*

JOHN ATKINSON, being duly sworn, says:

That he is one of said Humphrey's solicitors. That about the same time the complainant's solicitor filed the bill of complain*ant* in the case he filed a bill of complain*ant* for the same purpose in the Cheboygan County circuit court and obtained an injunction against defendant Humphrey, enjoining him from prosecuting an ejectment suit which he had commenced against the other defendants to obtain possession of the premises in question. That defendant Humphrey appeared and answered said bill, and put the same in readiness for hearing, and then said complainant voluntarily dismissed the same.

That defendant answered the bill of complaint in this cause in March, 1873. That complainant took no steps to take testimony herein until Sept. 18, 1874, although the case had been noticed for hearing in February, 1874. That said complainant then applied for an extension of the time to take testimony, and took an order extending the time in the absence of said Humphrey's counsel, and without having given any notice of any application for the purpose had one Maltby appointed an examiner to take testimony. That complainant's counsel afterwards waited until the time for taking testimony under his order, procured as
70 aforesaid, had almost expired, and then went to Cheboygan and took testimony without notice to said Humphrey's solicitors, although their office was within a few feet of his own, and gave notice to said Humphrey of less than four days, and so short that he knew it was impossible to procure the attendance of his solicitor.

That since the dismissal of the complainant's bill and injunction in Cheboygan County, the merits of this cause have been fully heard and tried in the circuit court for the county of Cheboygan in the ejectment suit above mentioned. That the complainant in this suit undertook the defence of that suit and introduced all the evidence he desired to substantiate the charges made in the bill of complaint in this case, and upon his own evidence, so introduced, the supreme court of this State has now twice decided in favor of the defendant Humphrey after a full consideration of the merits of said cause.

That this deponent has full knowledge of all the facts and circumstances connected with this cause and believes the same to be vexatious and oppressive.

JOHN ATKINSON.

Subscribed and sworn to before me this 10th day of May, 1875.

D. J. DAVISON,
U. S. Comm'r, East. Dist. Mich.

Filed May 10, 1875.

A. MANDELL, *Clerk.*

71 In the circuit court of the United States for the eastern district of Michigan. In equity.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, CHARLES A. HURD, Hiram D. Hurd, and David Smith.

STATE OF MICHIGAN,
County of Wayne, ss:

DEWITT C. HOLBROOK, of the city of Detroit, being duly sworn, doth depose and say:

That under the order of this court allowing the application to extend the time for taking proofs in this cause to be renewed he makes this affidavit and states: That he is familiar with the facts which he expects to prove by the persons hereinafter named, and which he derived from the persons themselves, and which he believes important to be proven by the complainant in this cause, and that he expects and believes that he will prove as follows: By the defendant Hiram D. Hurd, who solely conducted, on the behalf of the defendants Hurds and Smith, the purchase of the premises described in the bill in this cause, that neither the said Watts S. Humphrey, or the said defendant George P. Humphrey, had any consent, express or implied, from the said defendants Hurds and Smith to purchase the said premises of said Bela Chapman, nor was said Watts S. Humphrey in any way relieved from his duty as an attorney in relation to said purchase.

That he expects and believes that he will prove by George Roblin that the said Watts S. Humphrey was employed by complainant to
72 draw the contract for the sale of said premises by said complainant to said Hurds and Smith, and that some months thereafter he, said Watts S. Humphrey, rendered a bill containing a charge therefor to the complainant, and that the defect in the title to said premises by reason of the same appearing in said Chapman was kept concealed from the said Roblin, who acted on behalf of said complainant in making said sale, and that this fact was concealed from said Roblin by said Watts S. Humphrey.

And this deponent considers it material and important to examine or cross-examine the said Watts S. Humphrey in relation to all the matters aforesaid.

That he believes that he will be able to prove by the said George W. Bull that said Watts S. Humphrey, on one of the trials of the ejectment suit referred to, testified that he was jointly interested with the said George P. Humphrey in the purchase of said Bela Chapman.

That on the last trial of said ejectment suit the account rendered by said Watts S. Humphrey to complainant disappeared, and, as deponent believes, was irretrievably lost, and that fact it is necessary to prove that the contents of said account may be received in evidence.

That the testimony taken on behalf of the complainant on the 11th day of November last, being that of six witnesses before William H. Maltby, esq., a special examiner appointed by this court, was in fact written by one Samuel H. Taylor in the presence of said examiner, and who himself read said testimony after it was reduced to writing, and the same was subscribed by each witness in the presence of said examiner.

That said depositions have not as yet been returned to this court.

That this deponent has great doubts that said testimony was rightfully written by said Taylor, and that he is of the opinion that said witnesses should be re-examined and their testimony retaken.

73, 74 That said Taylor is an acting notary public in and for the county of Cheboygan, has acted as deputy clerk for said county, and is capable of performing the duties of an examiner with dispatch.

D. C. HOLBROOK.

Subscribed and sworn to before me this 9th day of June, A. D. 1875.

D. J. DAVISON,
U. S. Comm'r, East. Dist. Mich.

Filed June 10, 1875.

A. MANDELL, *Clk.*

75 In the circuit court of the United States for the eastern district of Michigan. In equity.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY ET AL.

And now comes the said complainant and by leave of the court heretofore granted renews the application heretofore made in this cause to extend the time for the taking of proofs therein, and moves that the time for said purpose be extended. This motion is based on the affidavit of D. C. Holbrook herewith filed and the files and proceedings in said cause.

D. C. HOLBROOK,
Sol'r for Compl't.

Filed June 10, 1875.

A. MANDELL, *Clerk.*

Order containing hearing of mo.

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court room, in the city of Detroit, on Monday, the twenty-eighth day of June, in the year one thousand eight hundred and seventy-seven.

Present, honorable Henry B. Brown, district judge.

76 SANFORD BAKER, COMPLAINANT,
vs.
GEORGE P. HUMPHREY ET AL, DEFENDANTS. } 1631. In equity.

The motion for further time to take testimony in this cause is hereby continued for hearing on Monday next.

77, 78 SANFORD BAKER
vs.
GEORGE P. HUMPHREY, CHARLES A. HURD, Hiram D. Hurd, and David Smith.

On hearing a renewal of the motion to extend time to take proofs in this case in part of complainant, it is ordered that such time be extended

as follows: To complainant thirty days from this day; then to the defendants thirty days thereafter, and that the complainant have fifteen days to make rebutting proof.

Filed July 6th, 1875.

A. MANDELL, *Clk.*

79 The circuit court of the United States for the eastern district of Michigan. In equity.

SANFORD BAKER
vs.
GEO. P. HUMPHREY, CHARLES A. HURD, Hiram D. Hurd, David Smith.

And now comes said defendant, Geo. P. Humphrey, by Atkinson, Hawley & Atkinson, his solicitors, and moves the court now here that the order heretofore made in this cause appointing Maltby a special examiner be vacated and set aside—

1. Because the same was made without notice.
2. Because under the rules and practice of this court Addison Mandell, esquire, examiner thereof, has been designated as the person before whom testimony shall be taken.
3. Because no cause has been shown for the appointment of a special examiner under rule 67 general equity rules.
4. Because said order is uncertain as to the person intended, no first or Christian name being given.

ATKINSON, HAWLEY & ATKINSON,
Sol's for Def't Humphrey.

DETROIT, *July* 24, 1875.

80 D. C. HOLBROOK, ESQ.,
Complainant's Sol'r.

SIR: Please take notice that a motion of which the foregoing is a copy has this day been filed in this cause, and the same will be called up for argument on Wednesday, the 28th day of July instant, at the opening of the court on that day, or as soon thereafter as counsel can be heard. The same is founded on the records and files in this cause and affidavit, of which a copy is hereto attached.

ATKINSON, HAWLEY & ATKINSON,
Sol'rs for Def't Humphrey.

DETROIT, *July* 24, 1875.

COUNTY OF WAYNE, *ss:*

John Atkinson, being duly sworn, says he is one of the solicitors of the defendant Humphrey; that as such he has had the active charge of this cause. That no notice has ever been received by him, or to his knowledge by any of the solicitors of said defendant, of the appointment of Maltby as a special examiner, or of any appplication for his appointment.

JOHN ATKINSON.

Subscribed and sworn to before me this 24th day of July, 1875.

C. I. PARSONS,
Notary Public, Wayne County.

81 U. S. OF AMERICA,
Eastern Dist. of Michigan, ss:

C. I. Parsons, being duly sworn, says that on the 24th day of July, A. D. 1875, he served a true copy of the within motion and notice upon D. C. Holbrook, esq., sol'r for the compl't in the within entitled cause, by leaving the same at his office in the city of Detroit, with a person doing business in said office, and of proper age and discretion.

C. I. PARSONS.

Subscribed and sworn to before me this 24th day of July, A. D. 1875.

ADDISON MANDELL,
Comm'r Circuit Court U. S., E. D. of M.

Filed July 24, 1875.

A. MANDELL, *Clk.*

82

83, 84 The circuit court of the United States for the e'n district of Michigan. In equity.

SANFORD BAKER
vs.
GEO. P. HUMPHREY, HIRAM D. HURD, Charles A. Hurd, and David Smith.

On motion of Atkinson, Hawley, & Atkinson, solicitors for the defendant Humphrey, and on hearing Mr. Wasey, of counsel for complainant, it is ordered that the order heretofore made, appointing a special examiner in this case, be vacated and set aside, and that the time for taking testimony in this cause for the complainant be extended for thirty days from the date hereof, with the same time to the defendant thereafter, as provided by the previous order of this court.

Filed July 26, 1875.

A. MANDELL, *Clk.*

85 In the circuit court of the United States for the eastern district of Michigan. In equity.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, CHARLES A. HURD, Hiram D. Hurd, and David Smith.

INDEX.

COMPLAINANT.	Folio.	DEFENDANT.	Folio.
Philip Bries	140	Watts S. Humphrey	269
John Vincent	143	Dewitt C. Holbrook	275
Watts S. Humphrey	155	George W. Bell	283
Charles Brannock	167	Sanford Baker	284
Francis M. Sammons	184	Sylvester Sammons	302
George P. Humphrey	237	John Atkinson	308
Medard Metivier	246	Samuel H. Taylor	311
George Roblin	255		
George W. Bell	263		

86 The circuit court of the United States for the eastern district of Michigan. In equity.

SANFORD BAKER
vs.
HIRAM D. HURD, CHARLES A. HURD, DAVID Smith, and George P. Humphrey.

It is hereby stipulated and agreed such witnesses as either party may see fit to examine may be examined before Sam'l H. Taylor, a notary public, at his office in Cheboygan, commencing Wednesday, Aug. 4th, 1875, at 11 a. m., and continuing from day to day for the present week if necessary.

D. C. HOLBROOK, *Sol'r for Compl't.*
ATKINSON, HAWLEY & ATKINSON,
Def't Humphrey's Sol'rs.

CHEBOYGAN, *Aug.* 2, 1875.

87 COMPLAINANT'S TESTIMONY.

PHILIP BRIES, being duly sworn, doth depose and say:

I live here in Cheboygan; have lived here 18 years. I know the premises described in the bill in this cause. I occupied a part of it. I occupied them from June, 1858, to October, 1859; no one else in possession at that time. I rented them from James S. Douglas; he was the agent of the Duncan estate. Bela Chapman has not resided in Cheboygan since I came. I know Bela Chapman; he resides in Mackinac; Mackinac is about 18 miles from here; he has never been in possession of these premises to my knowledge. Francis M. Sammons occupied the premises after I left.; he used the building for a fish-house. I saw Chapman often over in Cheboygan during the last eighteen years.

Cross-examination:

I occupied the log house for a store-house. I lived in a little building alongside which was attached to, as I suppose, another lot, and rented from another person. There was a door from the house I lived in into the log house. The house I lived in was a frame house, I should say about 16 x 24 ft., one story; the log house was about 20 x 35; I used it to store fish-barrels in. I was a cooper. I worked at another place. This was the way I occupied it from June, 1858, to October, 1859; cannot say whether the log house was all on this land or not.

PHILIP BRIES.

JOHN B. VINCENT, being duly sworn, doth depose and say:

I know Jacob Sammons, William M. Belote, and Bela Chapman. I have resided in this vicinity twenty-nine years this fall. I think I know the premises described in the bill in this cause. I occupied the premises; it was in 1852, I think; I rented it for a year, but I did not hold it that time. I run the mill about three months. I rented the premises from Jacob Sammons. I used the premises and mill, manufacturing
88 lumber; I used the premises for pasturage also; I believe I occupied fourteen acres. I know that Hurds & Smith now occupy a portion of the premises I rented. I had a conversation with Bela Chapman about his ownership of said premises and about drawing a deed thereof from Sammons to William M. Belote. When I talked to him about the ownership I didn't go to see him; I had been to Mackinac to

see Jonathan P. King about drawing a lease between Mr. Sammons and myself and Mr. McLeod, who was partner with me at that time, and coming home, we came home to Cheboygan together; on the way over we talked about the lease. Mr. Chapman said, I don't know whether I would bother about the thing. I asked him why. He said Sammons and Belote were about to make a trade, and it stopped at that for quite a spell. After a little we got into conversation again, and I asked him, "How is it, Chapman, I thought you owned that property." He said, "No, I never paid anything on it." He said, "Sammons has a right to rent; it is his property." Quite a while after this Bela Chapman told me that he wanted to see Sammons and his wife; he had a paper in his hand, and he wanted them to sign that deed. I asked him if that was a deed of that mill property. He said it was. He started and went off towards Sammons' house, and I saw him no more that day. I don't know whether Bela Chapman was a notary public then or not, but he was a justice of the peace, and had been elected that spring. I spoke to Bela Chapman again about it sometime after. I asked him how he came with the deed from Scot, and he said it was only to shield Sammons; that afterwards Michael Dansmon paid the debt and the property went back to Sammons. At the time Bela Chapman and I was coming to Cheboygan in the boat he told me he would not bother with it because as Sammons and Belote were about to make a trade and Belote would run the mill himself, and I could not lease it from him. He told me afterwards that Belote had bought the mill; the papers were signed and delivered; and he also told me how Belote paid Sammons for the property. I went to Mackinac to get the lease drawn because I knew of no one here that could do it. Bela Chapman resided in
89 Cheboygan at the time, but was then in Mackinac on business; I think a deputy collector. I think Bela Chapman was the only person who resided here at the time who drew deeds, mortgages, or other papers. Bela Chapman came here in 1851 from Mackinac to reside, and continued to do so until 1856, and then went to Mackinac, where he lived until he died. Never, to my knowledge, was Bela Chapman ever in the possession of the property in question. Mr. Belote was in possession in the spring before I rented them; he rented the premises from Mr. Sammons; he ran the mill for two years, and remained in possession until he left here. After J. W. Duncan left here he died, and Jeremiah and Alfred D. Woolston, members of the firm of J. W. Duncan & Co., were in possession of the premises. After them James S. Douglas, Francis M. Sammons, and Harrison Averill and Francis M. Sammons again were in possession as agents of the representatives of J. W. Duncan & Co., and of Walter Crane, the receiver. When I met Bela Chapman and he asked for Sammons and his wife, he said he had drawn a deed from Sammons and wife to Belote of the premises, and wanted them to sign it.

Cross-examined:

I occupied the premises in 1852. I was running the mill and manufacturing lumber.

Q. Was the mill upon any portion of the lands purchased by Hurds & Smith from Sanford Baker?

A. I can't say what they claim.

Q. Was the mill on what is now claimed by McArthur, Smith & Co.?

A. I can't say what they claim.

Q. Then you don't know the premises that are in dispute in this case?

A. No, I don't know it personally.

Q. What premises do you understand to be in dispute?

A. Sammons' old mill and the fourteen acres attached to it. I know the land now fenced in by Hurds & Smith. The mill was not on any portion of that. The mill was down below that, next to the lake. The mill has been enclosed for the last year. The mill has been used for a carpenter shop for the last four years until the last year. It was used by Arniot as a carpenter shop. Don't know whether he used
90 any of the land in question; think he used a little of it. Before Arniot used it it was a common; anybody had access to it. It had been a common for seven or eight years, and I don't know but ten. The land is low, flat, and marshy land along the lake. There was a fence between it and the lake when I occupied it. The fence went to rack right away after Duncan ceased to occupy it. I guess that must have been in 1865 or 1857. The land was a common from that time until Hurds & Smith fenced in a portion of it. It has always been a common except a year or two since I knew it. I have known it ever since the fall of 1846, before Sammons purchased it from the government. Chapman told me that the land was deeded to him to shield Sammons from debts which he owed Granger, at that time light-house keeper at Bois Blanc.

Redirect:

The fourteen acres of land I rented enclosed the land in possession of Hurds & Smith. The mill was in running order when I left in 185?, and continued to run after that. I think that Duncan ran the mill for a part of one season and the whole of another. He continued to run the mill until he died. I built some scows on that land. I think four years ago this summer I built one scow. Mr. Baker's foreman, Mr. Downs, gave me permission to occupy the premises. Not to my knowledge has Mr. Chapman ever occupied the land in question.

his
JOHN B. + VINCENT.
mark.

In presence of—
SAM'L H. TAYLOR.

WATTS S. HUMPHREY, being duly sworn, deposes and says:

I was admitted to the bar in 1869. I was practising as an attorney in Cheboygan in the year 1871 and 1872. I came here to reside May 7th, 1869. I am the person who drew the contract *from* complainant Baker to Hurds & Smith for the premises described in the bill in this cause.

I rendered an account to Mr. Baker containing a charge for mak-
91 ing that contract. Exhibit A, hereto attached, is a copy of the account taken from my book, except the last item, which is not on my book, and which exhibit is a copy of that which I rendered to Mr. Baker, as near as I can remember. Exhibits B and C are also copies of accounts rendered by me to the firms of which Mr. Baker was a member. I left Cheboygan to go to Mackinac on Sunday the 9th of June, 1872. Mr. Atkinson was with me. I went over in a sail-boat, the "Little Eddy". I procured an abstract of the title of that property and made an examination of it. I then discovered that the title was not perfect in Mr. Baker and that he had no title, as appeared from the records. This was some two or three days before I drew the contract. Mr. Roblin conducted the sale of the property for Mr. Baker as far as I knew. I did not state to Mr. Roblin that the abstract was defective in this point nor in any other.

Cross-examination:

In examining the title of that property I had no employment from Mr. Baker, but adversely to him and by Hurds & Smith, with express instructions from them to say nothing about the abstract to the property to him. I am the same party who purchased the property for defendant George P. Humphrey.

Q. Before you purchased for George P. Humphrey did you have permission from Hurds & Smith to do so?

(Objected to as incompetent, irrelevant, and not the subject of direct examination.)

A. They gave me permission to purchase it for myself or any one else.

Q. Had you stated fully to them the defects in the Baker title at the time you purchased for George P. Humphrey?

(Objected to as incompetent and irrelevant and not the subject of direct examination.)

A. Yes. I had stated to them the defects in the title, and advised them to purchase the Chapman title.

Q. What did they say when so advised?

92 (Same objection as last.)

A. They said they would take time to consider what they would do, and they did take one or two days to think it over in; they then came to me and wanted to know if they should purchase from Baker and they paid the money to him, whether they could collect the money from him again or not. I advised them that they could; if he deeded by warranty deed and his title failed they could recover, under the covenants of warranty, the money paid with seven per cent. interest. They then elected to take the Baker title and instructed me to draw up the contract. They said they would bring Mr. Roblin in the next morning and have the contract signed. I still advised them to take the Chapman title, as it was the best, and that my brother, the defendant, wanted to purchase it if they did not. They said I might purchase it for him or any one else, as they would not. I drew up the contract as Hurd's request, and at nine o'clock the next morning, Friday, they came in my office with Mr. Roblin, and the contract was signed.

(The above testimony was all taken subje t to the objection last above named.)

I find no charge on my books to Sanford Baker or G. Roblin for drawing up the contract. I demanded the pay for it from Hurds & Smith, but they said it belonged to Mr. Baker to pay, and to charge it to him. Hurds & Smith paid me for the balance of the services.

Thereupon the said WATTS S. HUMPHREY was called and examined as a witness on behalf of the defendant Humphrey.

(The same questions asked above and objected to were reasked and answered in the same way, subject to objection as incompetent and irrelevant.)

Q. When you bought the premises in question did you suppose

93 Bela Chapman to be the bona fide owner thereof?

(Objected to as irrelevant and incompetent.)

A. I did. He informed me that he was, and I believed him.

Q. Did you at that time know anything of his having drawn deeds of adverse claimants to others?

(Objected to as irrelevant and incompetent.)

A. No; I did not.

Cross-examined:

Mr. Baker was not here at the time of the negotiation and execution of the papers. I had no conversation with any one except Mr. Roblin in regard to this transaction. My conversation in regard to this matter was with Hiram D. Hurd and David Smith. I don't know whether David Smith was present at the time Hiram D. Hurd told me I might buy the Chapman title for my brother. They were both present at the time they refused to purchase the Chapman title. I did not tell Hiram D. Hurd that the defect in the Baker title was an old mortgage. I told him that Baker had no title, and that the defect in the Chapman title was an old mortgage, but considered it of no effect as it was outlawed. I told Hiram D. Hurd that my brother talked of buying the Chapman title if they did not. I bought the title from Chapman for my brother, George P. Humphrey, the defendant. I have no interest in the title to the property.

Q. Did you not swear as a witness on the trial of the case of George P. Humphrey against the defendants Hurds & Smith, in the ejectment in the circuit court for the county of Cheboygan, referred to in the bill and answer in this cause, in June, 1873: "I intended to buy the land if Mr. Hurd did not. I bought the land for George P. Humphrey and myself. John Atkinson is to have something for defending the title?"

A. I presume I did, and that that is the substance of it, but I have no recollection of it at present.

Q. Did you not also then and there swear, "When Hurds & Smith came from Detroit I told them they could have it (meaning the
94 title) for $5,000.00. After awhile we agreed upon $5,000.00 in case I succeeded, and I was to pay the cost and expenses"?

A. I don't think that I did.

Q. Did you so swear to that, fixing the price at $6,000.00 instead of $5,000.00?

A. I don't think it is correct, then.

Q. What do you say you did swear to on that subject?

A. It is impossible for me to say.

Q. Do you say that you did not so swear?

A. I don't think that I did.

WATTS S. HUMPHREY.

CHARLES BRANNOCK, being duly sworn, deposes and says:

I came into Cheboygan County in 1853; have lived in this village since the fall of 1861. I have heard the premises described in the bill read, and know them. I have known the premises since the spring of 1853. In 1854 Mr. Duncan employed me to overhaul the mill. The mill had pretty much run down. We put in a new heater and boiler, and did considerable other repairs, making it in good running order. The mill commenced running directly afterwards. It was run for about two years and during the winter of 1855 and 1856. I have occupied a portion of the premises, the same portion now in possession of Hurds & Smith, the defendants. I leased the premises from James S. Douglas or Francis M. Sammons, but I think it was Sammons. I think it was one or two years. I had it in that way until I bought the property adjoining it. Then I rented it of Francis M. Sammons, as the agent of the Duncan estate. I held it at that time until McArthur & Co. sold the premises to Baker, Thompson and Patterson; in fact I held possession until Hurds & Smith, the defendants, came into possession. I had a conversation with Baker, Thompson and Patterson about purchasing a

piece of the property, and afterwards with Mr. Meare, of Chicago,
95 who owned an interest in the premises. There were other portions of the premises that were occupied by others, parts below me and further down the river, and the mill itself was occupied for boat-building and store-house. Was well acquainted with Bela Chapman. I first became acquainted with him in July, 1850. He never, to my knowledge, occupied the premises. I never knew of his claiming them. He lived here when I came to the county. He afterwards went to reside in Mackimac. I think he did so in the fall of 1855. He was often over in Cheboygan after that. I know a portion of the property was fenced in as early as 1860 for a pasture. I think it remained fenced in for two or three years; I am not positive. It remained so until the street was put through to the shore of the lake. I don't recollect having any conversation with Bela Chapman about that property. I remember six or seven years ago that Baker, Thompson & Co. used the premises and stored their boom timbers. I remember John B. Vincent building a lighter on the premises about four or five years ago, since Baker became interested in the property. Henry Arniot also built several lighters on the premises below the part occupied by me and the mill since Mr. Baker had an interest in it. The boiler in that mill was taken out by McArthur, Smith & Co.

Cross-examined:

Q. You say you occupied these premises for ten years?

A. I occupied a portion of them for ten years.

Q. What was the nature of your occupation?

A. Making barrels, storing them; a cooper-shop. I used this building for storing.

Q. What kind of building?

A. Log building.

Q. Whereabouts was it situated on the premises?

A. Situate down the river from the line.

Q. How near was it to the boundary line of these premises?

A. A portion of it was on one side and a portion on the other.

Q. Who owned the other?

A. The other belonged to me after I purchased it of Sammons.

96 Q. Then the house that you occupied was partly on this land and partly on your own?

A. Yes, sir.

Q. Was there any more buildings than that one house? Did it constitute your dwelling?

A. Not the log house.

Q. Where was your dwelling?

A. South of that, up the river.

Q. Attached to it?

A. Attached to it.

Q. Where was your dwelling situated?

A. It was situated right alongside of the log house, and was attached to it.

Q. On whose land?

A. On my land.

Q. Then this building that you speak of as being occupied by you upon these premises was partly on your land and partly upon the premises in question and attached to your dwelling house?

A. Yes, sir.

Q. Was there an interior door between it and your dwelling house?

A. Yes, sir.
Q. Was that the way you occupied it, through that door?
A. No, sir. I had two outside doors also.
Q. What did you use it for?
A. Cooper-shop, and for storing barrels.
Q. You say you took possession in 1859 or 1860?
A. It might have been earlier than that; it might have been in 1858.
Q. What did you do with this land?
A. I used it for piling staves on.
Q. How much of it?
A. I could not tell how much; perhaps half an acre, more or less.
Q. Right alongside of your own place?
A. Yes, sir.
Q. You say you had a portion of it enclosed?
A. Yes, sir.
Q. Was that enclosed with lands of your own?
A. Yes, sir.
Q. It included your own dwelling and the yards around it?
A. Yes, sir.
Q. How much of it did you have enclosed?
A. I can't tell you.
Q. Half an acre?
A. No.
97 Q. Quarter of an acre?
A. I should think there was about a quarter of an acre, perhaps.
Q. You say you paid rent for a while?
A. Yes, sir.
Q. To whom?
A. Mr. Sammons.
Q. How long did you pay rent?
A. I paid rent I think from the time I took possession of it to the time it was sold to McArthur, Smith & Co.
Q. Up to the time the receiver sold it to McArthur, Smith & Co.?
A. Yes, sir.
Q. After that you paid rent to nobody?
A. I paid rent to nobody after that.
Q. Sammons, you say, had had possession of the building before that time?
A. Yes; he had possession of it as agent of the company, J. W. Duncan.
Q. Do you know that he was agent of the company?
A. I do.
Q. From whom did you know it?
A. From business he did for them and his paying taxes for them.
Q. Did they ever tell you that he was their agent?
A. Yes, sir.
Q. How large a building was this log house?
A. I think it was about 20 ft. wide and 40 feet long.
Q. How high was it?
A. Probably ten feet to the roof.
Q. How much of it was on your land?
A. I can't tell you.
Q. Has the land been definitely settled there?
A. I believe it has.
Q. Was it at that time?

A. I think it was always settled. I don't know that there were any known since.

Q. It was not established so as to be known definitely between the owners?

A. I don't know that, either. I don't know positively whether that was the case or not.

Q. You have occupied one side?

A. Yes, sir.

Q. Did you have your line established between you and their piece of land?

A. I have had it tested where the line was said to be.

Q. Between you and the owners of this land? Did you have the line established?

A. Yes, sir.

Q. When?

A. I got Mr. Humphrey to do it four or five years ago.

Q. And it ran through this log house?

98 A. Yes, sir; it ran through a portion of the log house.

Q. You can't tell how much was one one side?

A. I think there were four or five feet of this log house on the other side.

Q. Did you pay rent for the whole log house?

A. I don't know whether that included that four or five feet. I paid rent for the whole house.

Q. Was there any agreement that you should pay for only a portion or for the house?

A. I asked them what they would take for the use of the log house. There was nothing said about my part or their part.

Q. You rented the log house from Sammons?

A. Yes, sir.

Q. At that time Frank owned the frame house that you occupied for the dwelling also?

A. I can't tell whether he owned it at the time I made the bargain with him or not.

Q. Did you rent that also from him?

A. I did.

Q. Then you rented the whole premises, your own and this one, from Frank Sammons?

A. I think I did.

Q. Did this property, at that time your dwelling, belong to Crane?

A. No, sir.

Q. Or to the company, as you call them?

A. No, sir.

Q. How large a house is your own dwelling?

A. I think it is about 16x24.

Q. A two-story house?

A. No, sir.

Q. Was it as good a house as this log house, or better?

A. A better building.

Q. Was the entrance to your dwelling on this land or on your own? Your front door?

A. There was an entrance from my land into the house.

Q. Did you have any way of getting into your house except through this log house?

A. Yes, sir.

Q. Was your parlor on your own land?

A. We were not in the habit of having parlors in those times.
Q. Your sitting room?
A. We sat in all the rooms. There were two rooms in the house.
Q. Were they both on your land?
A. Yes, sir.
Q. Two rooms in your house. One down stairs and one up?
A. We did not have any up-stairs.
Q. That is the occupancy you speak of, as you have stated it?
A. Yes, sir.

CHAS. BRANNOCK.

99 FRANCIS M. SAMMONS, being duly sworn, deposes and says: My age was forty-one years last December. I have lived in this vicinity about thirty-one years. My father's name was Jacob Sammons. I know Bela Chapman. My father and Bela Chapman are dead. I have lived in this village for the last thirty years. I know the property described in the bill in this cause and the whole of lot three mentioned in said bill. My father once owned the whole of this lot. I knew William Scott. I think he now resides in Green Bay. A part of a house situated on that lot three was leased by my father to Bela Chapman in 1851 for the purpose of storing goods, and afterwards lived in it awhile. I collected the rent. I think he occupied it with his goods and family about three months. He never occupied or had possession of the premises at any other time, to my knowledge. He came from Mackinac when he put the goods in that house. He remained here four or five years after he came from Mackinac. He lived in Mackinac until his death. He came over to Cheboygan several times after he went to reside a' Mackinac. Sometimes he would stay a week or two, visiting. At the time he lived here he was a notary public, justice of the peace, and postmaster. I know he was in the habit of drawing deeds and mortgages for any one that called on him. I don't think there was any one else here during the year 1852 and 1853 who drew deeds and mortgages but Bela Chapman in this village. My father sold the premises to William S. M. Belote. My father was in possession of the premises from 1846 until he sold to Belote. Vincent and John McLeod run the mill prior to the sale to Belote. Belote remained in possession about a year until he sold to Duncan. Then Duncan took possession, repaired the mill, and run it about three years. I think Duncan died in the fall of 1855, and the mill was run one year after that. After Duncan died Jeremiah and Alfred D. Woolston had possession for about two years. Then James S. Douglas, as agent for John A. Duncan, executor of the estate of Jeremiah W. Duncan, had possession for about two years. Then I acted as agent under John A. Duncan, and afterwards under Walter Crane as receiver. I acted as agent under Duncan about one year, and when Crane was appointed receiver, for about five years. Mr. Averill acted under Crane, the
100 receiver, for about a year also. I delivered the premises over to the purchasers of Crane (under Crane's orders), John R. McArthur, George W. Swan, Lucius Southwick, and John F. McDonald. No other person had charge of the premises between the time of Duncan's death and the sale by Crane, the receiver, to McArthur and others, except those mentioned. John A. Duncan and Walter Crane paid the taxes from the time of Duncan's death to the time of the sale by Crane to McArthur, Southwick & Co. McDonald and Southwick came here and took charge of the property and held it until Baker and Patterson and Thompson purchased, when they took charge. Baker continued in

possession until the time he sold to Hurds & Smith, the defendants. There were (a) many other lands under the control of the agents of the Duncan estate besides this. I think about eleven thousand acres; that included a saw mill at Duncan Bay; one at the mouth of the river on the premises in dispute; also a water mill. After Duncan's death it was well known that the property was in charge of some one constantly. During all this time I never knew of Bela Chapman making any claim to this property. I think Chapman was employed to draw the deed from my father to Belote. I occupied the house on the premises for a store-house. I caused the premises to be fenced. Mr. Bries and Mr. Brannock also had possession of the premises under Douglas and myself.

Cross-examination:

Q. When did you come to town?

A. In April, 1845.

Q. Your father was then in occupation of these premises?

A. I suppose.

Q. And continued, you say, up to '52?

A. I think it was '52. It might have been the fall of '51.

Q. During that time did he sell the premises to anybody?

A. He sold a part of them; he still continued in possession. He sold an interest in it.

Q. These premises in question, do you know of his selling them?

A. I know of his selling to Belote.

Q. Do you know of his selling to Scott?

A. I know that he either gave him a deed or some lien on him in some way.

Q. You know that he had some transactions with Scott and gave him some papers?

101 A. I know that he had some transactions with him whereby he got supplies and money of him.

Q. Did he continue in possession afterwards?

A. Yes, sir.

Q. How long?

A. I think about five years.

Q. After that transaction with Scott?

A. I think so; I am not positive; it might not have been but three, but I think it was five years.

Q. Do you know of Scott disposing of his interest to anybody?

A. No.

Q. To Chapman?

A. No.

Q. You never knew what Scott had deeded to Chapman?

A. No, sir; not until after hearing of it here long after.

Q. Do you know of your father buying any mortgage on these premises given by Chapman to Scott?

A. I know that he got——

Q. Do you know of his buying such a mortgage?

A. No, sir; I do not.

Q. You say your father occupied until '52, you think?

A. Yes. sir.

Q. And then Belote took charge?

A. Yes, sir.

Q. Did Belote run the mill that was on the premises?

A. One summer I think, only.

Q. There was a mill on the premises in question—that is the Hurds & Smith land?

A. Not on the land sold to them.
Q. Where was the mill?
A. It was below the land sold to them.
Q. It was not on any of the premises in dispute in this suit?
A. Not as I understand it.
Q. You say Belote run the mill after he bought it?
A. Yes, sir.
Q. And then Duncan run the mill awhile?
A. Yes, sir.
Q. That was in 1855?
A. I am not positive.
Q. About that?
A. Yes, sir.
Q. What time in the year did Duncan buy; do you know?
A. I don't remember now.
Q. Do you remember the premises in '55—the premises in question in this suit?
102 A. Yes, sir.
Q. Were they enclosed at the time?
A. I could not tell.
Q. Was there any enclosure about them?
A. I think there was, but I could not state positively whether it was up all the time. I know it was enclosed.
Q. What kind of an enclosure was it?
A. A fence.
Q. What kind of a fence?
A. A board fence on one side and somebody's logs in the swamp so that cattle could not get around the other end of it.
Q. That was in '56?
A. Yes, sir.
Q. Do you remember seeing it there?
A. I know it was fenced all the time.
Q. Do you remember that particular year?
A. I would not want to say as to that particular year.
Q. Then you don't know whether it was up that particular year or not?
A. There was a pair of bars there, and sometimes they were down and sometimes they were up.
Q. Sometime the enclosure was kept up and sometimes it was down?
A. Yes, sir.
Q. How was it in '56, to your knowledge?
A. I would not state positively.
Q. Who was on the land in '56?
A. I think it was Theodore Medlehofer.
Q. Was the mill running in '56?
A. I think it was.
Q. That was after Duncan's death?
A. Yes, sir.
Q. Medlehofer was running the mill?
A. I think he was foreman of the mill; I knew he had charge of the boarding house and I think he was foreman of the mill.
Q. That is the mill you have already spoken of?
A. Yes.
Q. What was done with the premises in question that year?
A. I think they took out the old boilers; put in new; fitted it up and sawed with it.

Q. What was done with the premises in question in this suit
103 in the year '56?
A. He lived on it.
Q. In what house?
A. The log house spoken of by Brannock.
Q. Was there anything else done on the premises that year?
A. He had a garden there some of the time; I do not know whether he did that year or not.
Q. How much of a garden?
A. A quarter of an acre, probably.
Q. Was that enclosed?
A. Yes.
Q. Fenced off?
A. I cannot say whether that was fenced off by itself or not.
Q. Was it enclosed with other lands where Brannock afterwards lived?
A. Yes, it was enclosed with another partie's land that did not belong to these premises; I don't think the Brannock place was enclosed; I think the fence was run on what was calculated to be the line.
Q. And didn't include the Brannock place at that time?
A. No.
Q. Was the Brannock house built in '56?
A. Yes, sir.
Q. And was attached to this house?
A. Yes, sir.
Q. Do you think the fence shut it out from this house?
A. No, sir; I do not think it did.
Q. Did it include this house with the Brannock house?
A. No, sir; I do not think it did.
Q. Did it include this house?
A. Yes.
Q. Didn't it run between this house and the Brannock house?
A. No.
Q. Didn't it include the Brannock house?
A. No; the Brannock house was a wing on the side of the other house and that fence came down to the southwest corner of the house. The southwest corner of that house didn't stand on the Brannock land.
Q. It came down to the corner of the house and left the wing outside?
A. Yes.
Q. Was the wing, as you call it, occupied at that time?
A. Yes, sir.
Q. What kind of a building was the wing?
A. A frame.
Q. Was it a better house than this log house? Was it where the family lived?
A. Didn't live in that any more than the other.
Q. They lived in the log house?
A. They occupied it all.
104 Q. A door between them?
A. Yes.
Q, Do you remember what the log house was used for by them?
A. Used to cook in, eat and sleep in.
Q. Was it a kitchen and dining room?
A. Yes, sir.
Q. What was the other used for?

A. The family that had charge of the house used that for their own private rooms.
Q. In '67 who occupied it?
A. I think Bries occupied it; I am not certain.
Q. Did he live in both?
A. No, sir; he lived in the frame part when he lived there.
Q. Did he have an enclosure?
A. Not that I know of.
Q. There was no enclosure that year?
A. I do not know whether there was or not; I would not be positive about that.
Q. In '58 who occupied it?
A. I think he did.
Q. He occupied it in the same way as '57?
A. I am not certain he did in '58; I think my brother occupied it in '58.
Q. Sylvester?
A. Yes, sir.
Q. Did he occupy both houses?
A. He did; not to live in it.
Q. Did he occupy both?
A. I would not be positive as to that.
Q. Which did he occupy?
A. He lived in the frame part.
Q. And the frame house was not on these premises?
A. I think a part of it was.
Q. Part of what Brannock spoke of as the Brannock house?
A. Yes; I think there was a small portion on it.
Q. The line then has not been definitely settled?
A. Not that I know of.
Q. Somewhat in dispute always?
A. I believe it is.
Q. Did your brother have an enclosure.
A. I do not know that he made any for himself particularly.
Q. Did he have one whiles he was there?
A. I do not know that he had any; there was an enclosure there at the same time; he did not have possession of the property, only the house.
105 Q. Only the frame house?
A. I think he had the whole but did not live in it.
Q. There was an enclosure there?
A. Yes, sir.
Q. Who had that?
A. I had.
Q. What did you do with it?
A. Pasture cattle and horses there.
Q. How much of it was enclosed?
A. 80 or 100 acres enclosed, so cattle could run around on it.
Q. All that river front?
A. Yes, sir; and then up the shore.
Q. Where was the fence?
A. Along the south side.
Q. Where did it run from?
A. From the log house.
Q. To what point?
A. Into the woods.

Q. It enclosed off the swamp down by the lake?
A. Yes, sir.
Q. Some 80 or 100 acres?
A. Yes, sir.
Q. And you used all for pasturage?
A. Yes, sir.
Q. How far up did the fence run?
A. Probably 160 rods from the river up into the woods.
Q. And then the cattle had full range of the swamp all along the lake?
A. Yes, sir.
Q. There was no swamp on the west side?
A. No, sir.
Q. There was a fence on one side between this place and the Brannock place. Did you own most of the property on this side of the fence?
A. Yes, sir.
Q. Was this about the line of the fence?
A. Very near on the line.
Q. In the winter of '68, what was the situation of the premises?
A. Come to think more distinctly about that, in the winter I think Bries lived there still.
Q. You think Bries lived in the frame house?
A. I think so.
Q. How were the lands occupied, if at all?
A. I think there was no one lived on it in the winter of '58.
Q. Was there no one pasturing cattle down there?
A. They don't pasture much in the winter.
Q. It is not customary here?
A. No, sir.
Q. There was no one occupying the house?
A. The house was occupied.
106 Q. I understood you to say it was not occupied?
A. I said there was no one living in it.
Q. Who occupied it and didn't live in it?
A. I occupied the log part with barrels. No I didn't.
Q. No one occupied *occupied* then?
A. I am not certain that Bries did. I don't remember as to that.
Q. Was any thing done with the land that winter?
A. Not that I know of.
Q. In '59, who occupied it?
A. We had some wood on the bank. Douglas had charge of the property in 1859.
Q. Where did Douglas live?
A. Where Brannock does now.
Q. He had charge of the whole Duncan estate?
A. Yes, sir.
Q. Consisting of a great deal of property, including thousand of acres, several mills and a great deal of vacant property?
A. Yes, sir.
Q. Did you live on the premises in question?
A. Not in the summer of 1859.
Q. Did he have anybody living on it?
A. Yes, sir.
Q. Who was it?
A. William Stewart.
Q. Where did he live?

A. Down at the bay.
Q. Upon these premises down at the bay?
A. You asked if he didn't occupy several thousand acres.
Q. I ask you if he was living on the premises in question?
A. No, sir.
Q. Did he have any one living on them?
A. I think Bries lived on them in the house.
Q. In the frame house?
A. That is not on the premises. I think he had a cooper shop in the log part and worked at coopering in the log part, and lived in the frame part.
Q. Do you know whether he did or not, in the year 1859? You are swearing that Bries kept a cooper shop in that house. Do you know anything about it?
107 A. I think so. I am not positive.
Q. And lived in the other house?
A. Yes.
Q. Who occupied the land that summer?
A. There was no occupation more than the agent having control of it, that I know of.
Q. The agent lived in another place in this township at that time?
A. Yes.
Q. He had control of a great deal of land as you have stated?
A. Yes, sir.
Q. And this was a portion of the general estate as you understood it?
A. Yes, sir.
Q. In the winter of '59, who occupied it?
A. I am not certain whether I occupied it in the winter of '59 or not. I occupied it in the winter of 1860.
Q. Was anybody using the land in the winter of '59?
A. I am not certain.
Q. In '60, did anybody occupy the house?
A. Yes, sir.
Q. Whom?
A. Sylvester Sammons.
Q. Did he occupy both houses?
A. I think he did.
Q. You think he occupied them both and used them together?
A. Not used them together as a dwelling, only as a work shop.
Q. In the winter of '69, who occupied the house, if anybody?
A. I think he did.
Q. What was done with the land in '60?
A. I stored some cedar posts on it.
Q. Whereabouts?
A. Down about where Hurd's dock now is.
Q. How many posts?
A. I could not tell the exact amount without referring to my books.
Q. You piled some posts there?
A. Yes.
Q. Whose posts were they?
A. Mine.
Q. Was there anybody else piling posts there?
A. I think not.
Q. Did James Watson use it a part of the time?
A. Not in '60.

Q. In '61, who was in possession of the dwelling house in the summer?
A. I think Brannock was.
108 Q. It was then used in connection with the other?
A. Yes, sir; there was one year we used a part of the house separate from the other, and there was a family in the other part. I won't be sure when that was.
Q. How was the land used that summer?
A. I had posts piled there.
Q. On the river bank?
A. Yes, sir.
Q. How many posts?
A. I could not tell the exact amount; there might have been 20,000 and there might have been 40,000.
Q. Anybody else have anything on the bank?
A. No, sir.
Q. These were your own posts?
A. Yes.
Q. In the summer of '62, who occupied it?
A. Watson and I together.
Q. What part did he occupy?
A. The same as I did.
Q. What was the name of the company?
A. Sammons & Watson.
Q. Did you live in the house?
A. No.
Q. Who did?
A. Brannock owned it. I don't suppose he lived in it.
Q. Who lived in it?
A. I don't know.
Q. When you say you owned it, you refer to the Brannock house?
A. Yes, sir.
Q. Who occupied the other in the summer of '62?
A. I could not tell.
Q. Was it occupied in connection with the Brannock house in '62, if at all?
A. I cannot say.
Q. Do you know if its being occupied separately from the Brannock house in 1862, positively?
A. No.
Q. In the summer of '62, you say Sammons & Watson occupied the land?
A. Yes, sir.
Q. For what purpose?
A. Piling cedar posts.
Q. What portion of the land did they occupy?
A. The bank of the river.
Q. Was there any dock on the river?
A. No, sir.
109 Q. Was the land fenced in '62?
A. I could not say what year it was done.
Q. I ask you with reference to '62. Be kind enough to answer my question.
A. I do not know who occupied the house.
Q. You and Watson piled some posts on the bank?
A. Yes, sir.
Q. In the summer of '63 how was the house occupied, if at all?

A. I think Brannock's son occupied it.
Q. Was it occupied in connection with the other house?
A. Yes.
Q. Was it occupied in connection with the other house in '64?
A. Yes, sir.
Q. Was it in '65?
A. Yes.
Q. 1866?
A. Yes, sir.
Q. 1867?
A. Yes, sir.
Q. And up to the time it was torn down?
A. Yes.
Q. It was always occupied in connection with the other house?
A. Yes, sir.
Q. Who occupied the land in 1863?
A. I did.
Q. What for?
A. Piling posts.
Q. Anybody else pile posts there?
A. I could not state particularly as to that year.
Q. 1864, who occupied the land?
A. I did.
Q. In the same way?
A. Yes, sir.
Q. In '65?
A. Yes, sir.
Q. Did anybody else pile any there but you in '65?
A. I am not positive as to that.
Q. Can you remember whether anybody else was using it?
A. I do not know that they did. I do not know but they did.
Q. In '64 did anybody else occupy it with you?
A. Yes.
Q. Who else occupied it?
A. Watson.
Q. Did anybody but the firm of Sammons & Watson pile anything there?
A. I think not.
Q. In '65?
A. I do not think they did.
Q. In '66 did anybody else?
A. I could not say that they did.
Q. Did you occupy it in '66?
A. No, sir.
Q. 1867?
A. No, sir.
Q. In 1868?
A. No, sir.
110 Q. In 1870?
A. No, sir; not particularly. I have been across it.
Q. You walked over it?
A. Yes.
Q. In '70?
A. Yes.
Q. In '71 did you occupy it?
A. No.

Q. In 1872?
A. No.
Q. You say Chapman came there in 1851 or 1852?
A. I think it was.
Q. How do you fix the date when Chapman came there so definitely?
A. I know I went away in the winter that he came here; I went to Chicago. I know that he was appointed postmaster in the winter of 1852.
Q. And therefore you know he came in the winter of '51 or '52?
A. I have copies of letters to that effect.
Q. To what effect?
A. That he was appointed postmaster then.
Q. You were away from '51 to '53?
A. No, sir.
Q. When were you away?
A. Part of the time. I was away during the winter of '51 and '52.
Q. And you went away the winter that he came?
A. He may have come in the summer of '50.
Q. How do you know?
A. I know from my going away.
Q. What makes you remember that you went away in the winter that Chapman moved down? Was there anything connected with your going away and his coming that brings the two things together?
A. My father sold the property in that year and I went away in the fall after he was here.
Q. Your father sold the property that year?
A. Yes, sir.
Q. To whom?
A. Belote. I cannot say whether it was '51 or '52. We went away that same fall, I think.
Q. You went away the fall that your father sold to Belote?
A. I don't know; it may have been the year after. One circumstance is this: I know the vessel he was moved away in was the same vessel Belote sold to father in part payment for the mill?
111 Q. What was the vessel?
A. The Mary Chapman.
Q. Who sailed her?
A. Kitchen.
Q. When Chapman came over?
A. Yes, sir.
Q. Kitchen living now?
A. Yes, sir.
Q. He brought Chapman over from Mackinac here?
A. Yes, sir.
Q. And you say you went away when your father sold to Belote?
A. Yes, sir.
Q. And in that way you know that Chapman came here in '51 or '52?
A. I think so.
Q. Will you tell me how the fact that you went away or in reference to your father's selling to Belote makes you remember the fact that Chapman came here in '51 or '52.
A. It seems to me that the winter I went away was '52.
Q. How does the fact that you went away or in reference to your father's selling to Belote fix in your mind the fact that Chapman came in '51 or '52? What have the two things to do with other?

A. I just told you.

Q. The way that you fix it is that the same vessel that brought Chapman over here your father afterwards got from Belote in part payment for the property?

A. Yes, sir; and the memory I have had in my mind since that.

Q. You say Chapman came here the spring before you went to Chicago?

A. He came sometime in the summer; I could not state exactly what time.

Q. Where did Chapman move when he came here?

A. Moved into that log house down there.

Q. How long did he stay there?

A. I think about three months.

Q. Where did he go from there?

A. Moved into his own house.

Q. Where is that?

A. Right across here from the court-house.

Q. He stopped there while he was getting his house ready, didn't he?

A. Yes.

Q. How long?

A. About three months.

Q. Had he built this house before he came over?

A. It was in construction at that time.

Q. Enclosed?

A. Yes.

Q. What did he do to it after he came here?

A. Lathed, plastered, and clapboarded it.

Q. This was the landing place for boats at that time near this old house.

A. Yes, sir.

112 Q. And he landed his things there and put them in?

A. Yes, sir.

Q. Did he live in the house also?

A. Yes, sir.

Q. Was it a dwelling as well as store-house?

A. It was not used for a storehouse then.

Q. At that time your father was running the mill?

A. I think he was not running it that season. One summer it was laid, and I think that summer he was not running it.

Q. Was anybody else living in this house when Chapman was living in it?

A. I think so.

Q. You think Belote had been living in it before?

A. Yes, sir.

Q. It was vacant when he came over and he moved in and occupied it two or three months?

A. About.

Q. You collected the rent?

A. Yes.

Q. How often did you collect the rent from him?

A. I didn't collect the rent until the next year.

Q. How much rent did you collect?

A. I could not tell the exact amount.

Q. How do you remember you collected the rent?

A. He paid it.

Q. What time?

A. Sometime in June.
Q. After you came back from Chicago?
A. Yes, sir.
Q. You remember that fact positively?
A. Yes.
Q. You remember these facts, that you went to Chicago the winter that your father sold to Belote?
A. Yes, sir.
Q. That you collected rent of Chapman the year that you came back from Chicago?
A. Yes, sir; but it was not for the rent of that year; it was for the rent of the year before.
Q. After you came back that fall you collected rent for the occupation while you were in Chicago?
A. Yes, sir.
Q. Have you ever claimed to own these premises yourself?
A. No; only a part of them.
Q. The premises in question you never claimed to own?
A. No, sir.
Q. Did you own this Brannock house?
A. Yes, sir.
113 Q. How long did you own that?
A. I am not positive; it was about a year, I think.
Q. When was that house built?
A. I think it was built in the fall of '49.
Q. That was built on the premises south of these premises?
A. Yes, sir.

FRANCIS M. SAMMONS.

GEORGE P. HUMPHREY, being duly sworn, deposes and says:
I reside in Cheboygan. Am one of the defendants in this suit. I am a brother of Watts S. Humphrey. He was a practising attorney in 1872 and in 1873. I am the person to whom Bela Chapman deeded the premises described in the bill in this cause. I had lately come from the woods and I was asked by Watts S. Humphrey to make an abstract of that piece of land for Hurds & Smith, the other defendants; that I could make six or seven dollars by it. I told him that I thought I had not time while I staid here to prepare an abstract. That I thought he (Watts S. Humphrey) had better go to Mr. Bell; he kept the abstracts of lands in this county. It was made out by Mr. Taylor in Mr. Bell's office. Watts, he told me that he did not care for Mr. Bell to make it out as he was Mr. Baker's attorney. It was procured by said Watts S. Humphrey. He showed it to me and we looked it over together. He wanted to know what I thought of it. He said he was getting it for defendants Hurds & Smith. I understood Mr. Baker wanted to sell it to them (Hurds & Smith) and they wanted to see whether the title was good or not. I found from the abstract that there was no deed from Chapman to Baker or to the persons through whom he claimed. We look' over the abstract one evening. The next morning, as we were coming out of the Benton House from breakfast, Hiram D. Hurd came out with us. My brother in going to his office told him of the defect we had found in the title. They then went up into the office to look it over. That afternoon my brother told me they were going to take till Thursday night or Friday morning to consider whether they
114 would take the Baker or Chapman title. I don't know whether it was the day the contract was signed or not, but it was on Fri-

day he told me that Hurds & Smith had concluded to take the Baker title, and that it released him and that I could take the Chapman title if I wanted to. I started to go to Mackinac that afternoon on the Grace Dormer, but the boat left me. One purpose of my going there was to purchase the Chapman title. The boat having left me, I returned from Duncan to Cheboygan, and the next day (Saturday) I started for Grand Traverse. The next I heard of it was that Watts S. Humphrey had got the land. Mr. Chadwick, of Port Huron, informed me of this in coming up to Cheboygan on the Marine City. When I left for Grand Traverse I left my papers and money with my brother, Watts S. Humphrey. I left with him about two hundred and fifty dollars, two hundred of which was to be paid to a Mr. Gray, of Mackinac, as a payment on a lot. I received no information in regards the title of the land only from said Watts S. Humphrey and said abstract. I never had conversation with Hurds & Smith in regards to this title except the morning my brother told them of the defect. My brother told me he paid $25.00 for the title. My brother told me he would carry on the lawsuit and *and* if I won I was to do what was right. I have to pay the costs of suit and my brother's costs and travelling expenses. He is to give his time. Watts S. Humphrey took the twenty-five dollars he paid to Chapman out of the money I left with him. My brother told me that Hurds & Smith got him to look up the title.

Cross-examination of GEORGE P. HUMPHREY:

At the time of the purchase I knew nothing of Chapman having drawn deeds from Sammons to Belote.

(Objected to as irrelevant.)

I first heard of it when the ejectment suit was tried. I have known the premises for about five years. I never knew them to be occupied until Hurds & Smith took possession. That was in 1872, I think. They were common' before that. Hurds & Smith have never made any
115 claim to me for this title or asked me to deed to them. I have never had any conversation with them or any one on their behalf in regard to that. Mr. Baker has never made any claim upon me, nor Mr. Roblin has never made any. My brother had informed me before my purchase that he had been released from all obligation respecting the title to this property by Hurds & Smith, and that I might purchase it for myself. In reliance upon that I authorized the purchase for me.

(The testimony in relation to what Watts Humphrey said in the right to purchase taken subject to objection of irrelevancy and incompetency and being hearsay.)

GEORGE P. HUMPHREY.

MEDARD METIVIER, being duly sworn, deposes and says:

I am in my sixtieth year. I came to live in this village in 1851. Lived here ever since, except about six years when I lived in Mackinac an' Chicago during the war. I know Jacob Sammons and Bela Chapman; they are both dead. I remember being at the house of Jacob Sammons when a deed was executed by Sammons and wife to Belote. I witnessed the deed. That deed was witnessed by and acknowledged before Dela Chapman, as notary public. I think there was another deed executed by Sammons and wife to Belote, which I witnessed when Bela Chapman was present. I remember the circumstances distinctly of one deed being executed, witnessed by myself and Chapman, from the fact that the room was very dark owing to Mrs. Sammons having very sore eyes, and we had to raise the curtain for more light. There was

not any other full grown person there unless Mr. Belote was there, about which I cannot state positively, than Mr. and Mrs. Sammons, Mr. Chapman, and myself. A part of the deed which I witnessed was in print. It was an old-fashioned form of printed deed. Mr. Chapman brought the form from Mackinac or somewhere. He only had them here. I know the premises described in the bill in this cause, and Chapman was never in possession of them to my knowledge. I know Mr. Chap-
116 man's handwriting very well, and I remember particularly that the deeds witnessed by myself and Mr. Chapman and acknowledged before him were in his (Chapman's) handwriting, and that he drew both of them. I know one of the deeds then executed by Sammons and wife to Belote conveyed the premises in question and other property; cannot tell all of the other property.

Cross-examined:

I have known the property since the year 1851; cannot tell as to the occupation of the property positively. Part of the time it was open and part of the time shut. It has been open a part of the time and every one's cattle run it. It has been open ever since, except a small piece enclosed by Brannock. The piece enclosed by Brannock was enclosed in connection with the house on other lands. The piece enclosed by Brannock was used for his cooper-shop and house yard. The cooper-shop and house were connected together by an interior door. Mr. Brannock's dwelling house was situated on his own land. The cooper-shop was partly on this land and partly on his. I don't recollect reading the deed I witnessed from Sammons to Belote. The acknowledgment was in Chapman's handwriting. I don't know about the body of the deed. I don't recollect reading the body of the deed. I couldn't state positively whether the acknowledgment was in the usual form. I have witnessed two deeds, but cannot recollect positively whether it was at the same time. I don't recollect having read either of the deeds. I hold the office of county clerk and register of deeds for Cheboygan County; have held these office' since 1872. The room was very dark when this deed was executed. The curtain was down. I don't know how I fixed the fact that it was to Belote. I don't recollect seeing Belote's name in the deed. I don't recollect whether Belote was present. Mr. Chapman had the deeds when I saw them, but who took them afterwards I can't say. Jacob Sammons owned the entire village plat, except a few lots which he had sold and was deeding to different persons at different times. I got the impression that the deed conveyed these premises in dispute either by reading or talk, I can't say which. I believe
117 Mr. Sammons was present when his wife signed and acknowledged the deed. At the time she acknowledged the deed he was not in. He stepped into the house or somewhere for a minute or two. I can't recollect whether I had any talk with Sammons at the time about the deed or with Mrs. Sammons. I don't recollect having any talk with Chapman about it. The most that I can say is that I witnessed a deed signed by Jacob Sammons and wife, acknowledged before Bela Chapman, and the acknowledgment to which was in his handwriting. I know William Scott. I know of him having dealings with Sammons. He is still living, unless he died not long ago. He used to deal with Chapmam.

Redirect:

I got the impression that the deed conveyed the premises in dispute about that time. I went there with both Mr. Chapman and Mr. Sam-

mons. I saw the deed signed about which I got the impression conveyed the premises in dispute.

Q. Was not that deed read by Chapman to Sammons and his wife in presence of the witness?

(Objected to as leading.)

A. I cannot recollect it.

Q. Was not the description of the premises in that deed in the handwriting of Chapman?

(Objected to as leading.)

A. I can't say that I recollect distinctly.

Q. Was or was not that deed explained to Mrs. Sammons when she signed it?

(Objected to as leading and irrelevent.)

A. I can't recollect positively. I don't recollect myself and Chapman witnessing more than two deeds. I don't remember the exact year. I think it was about the year 1851 or 1852; I could not state positively either to that.

MEDARD METIVIER.

118 GEORGE ROBLIN, being duly sworn, deposes and says:

I have resided here about six years. I am the person who signed the contract with Hurds & Smith for Mr. Baker. They took possession of the property in June, 1872, I think. They are the defendants in this case. They have been in possession ever since; Mr. Hurds have. They entered into possession by virtue of that contract. Mr. Watts S. Humphrey drew that contract; he drew it for Mr. Baker; I requested him to do it; he had before that time drawn other contracts from Mr. Baker to other parties as the attorney of Mr. Baker. He rendered Mr. Baker an account containing the charge for drawing this contract. Mr. Baker did not take any part in the negotiation for the sale. I presume he was in Canada at that time; he was not here. I was not advised of the claim of Chapman on that property until Hurds had taken possession. I did not know of it. I have no recollection of one Samuel H. Taylor informing me that Chapman was the owner of that land. At the time we went to sign the contract I made an inquiry of Mr. Humphrey how he found the title; I asked him if he found the title all right; he said that it was all right excepting a mortgage given by Thompson Smith to Meare & Bates. Hiram D. Hurd was present at the time that inquiry was made. It was after the deed was made by Chapman to George P. Humphrey, the defendant, that I first knew of the defect. I made an attempt to tender to George P. Humphrey, the defendant, the money that he had paid Chapman and other expenses which he had paid to procure that deed. I went up to Mr. Watts S. Humphrey' office on the 6th day of January, 1873, and tendered Watts S. Humphrey (George P. Humphrey was not there) twenty-five dollars and his expenses in procuring the title from Bela Chapman for the premises in dispute. I also offered him twenty dollars as costs in suit of complainant against George P. Humphrey. Mr. Humphrey took the twenty dollars, but refused to take the twenty-five dollars and expenses in procuring
119 the quit-claim deed from Mr. Chapman. I think George P. Humphrey was not in this county at that time.

Cross-examined:

I heard Mr. Hurd ask Watts S. Humphrey to look into the title at the time we went up to have the contract drawn. It was about three or four days after that we got the contract. I am related to Mr. Baker; he is

my father-in-law. George P. Humphrey was not present, so far as I know, during the negotiations with Hurds & Smith. I saw Watts S. Humphrey shortly after the purchase by George P. Humphrey. I told him that I did not think it was quite straight work. I didn't feel in very good humor about it and went off. In buying the property Mr. Hurd was acting for himself; I was acting for Mr. Baker. Mr. Hurd is not a son-in-law of Mr. Baker. I was selling it to him. I did Mr. Baker's part myself. Hurd is not related in any way to Baker. Mr. Humphrey is not related in any way to Baker; neither of the Mr. Humphreys. I am positive, so far as I know, that Mr. Hurd was not acting in any way for Baker. Mr. Hurd did not employ Mr. Humphrey as attorney for Mr. Baker, I am certain of that, in making this contract; don't know of his ever employing Humphrey for Mr. Baker; did not tell him he must employ an attorney for Mr. Baker to look up the title. Mr. Baker was not here at that time. Hurd has not been acting for Mr. Baker since that time; guess not before that time. I don't know whether this suit is prosecuted by Baker at Hurd's request. It is admitted that Baker has deeded to Hurds & Smith according to the terms of the contract on the twenty-fourth day of October, 1872. Baker is defending the ejectment suits commenced against Hurds by George P. Humphrey. I cannot say whether he is doing so at Hurd's request or not.

GEORGE ROBLIN.

Cross-examination (continued):

120 I offered to pay him twenty-five dollars and his expenses in procuring the title from Chapman. I did not hire him to go over and buy the land for Mr. Baker or myself. I didn't authorize Mr. Hurd to employ Humphrey to go over and purchase the Chapman title for me or Mr. Baker. I knew nothing of the buying of that title. I had instructions from Mr. Holbrook (Mr. Baker's attorney) to go and pay Humphrey twenty-five dollars for the deed and his expenses in procuring the title. There was nothing said about services. I don't recollect referring Hurd to Mr. Humphrey as Mr. Baker's attorney.

GEORGE ROBLIN.

GEORGE W. BELL, being duly sworn, deposes and says:

I am an attorney at law. I attended the trial of the case of George P. Humphrey against Charles A. Hurd, Hiram D. Hurd, and David Smith in the circuit court for the county of Cheboygan in June, 1873. Watts S. Humphrey was sworn there as a witness on the part of the plaintiff.

Q. Did he testify on that trial as follows: "I intended to buy the land if Mr. Hurd did not. I bought the land for George P. Humphrey and myself. John Atkinson is to have something for defending the title"?

A. I remember the last part; I don't remember fully the first part. I remember that he swore, "I bought the land for George P. Humphrey and myself, and John Atkinson was to have something for defending the title."

Q. Did he also swear, "When Hurds & Smith came from Detroit I told them they could have it for $6,000.00. After a while we agreed upon $5,000.00 in case I succeed', and I was to pay the costs and expenses"?

A. He did in substance.

Q. Are you acquainted with the premises in dispute? What do you think is the value of them?

A. I should think they were worth six or seven thousand dollars at the time this suit was commenced. I should think they were worth that now. I am acquainted with the premises; have lived here six years.

121 Cross-examined:

I don't think I am employed in this case; am employed in the ejectment case mentioned in the bill. I was an attorney on the trial. When I say this testimony was given by Mr. Humphrey I was employed by Mr. Baker. I am still retained in that case. I suppose the facts in that case and in this are the same. The same questions are involved in the two suits. As far as I heard the testimony given in this case, I think the testimony was introduced in that case to the same points to which testimony has been introduced into this, as I understand the questions involved are precisely the same and they depend upon the same state of facts.

Q. Who has had the chief management of the ejectment suits—Mr. Holbrook or yourself?

(Objected to as irrelevant.)

A. Mr. Holbrook, the same party who is solicitor in this case, as I understand it. I know Francis M. Sammons; have known him six years.

Q. Do you know the reputation he bears for truth and veracity?

This question was written down by mistake, not having been asked.

GEO. W. BELL.

It is admitted by the solicitor for the defendant Humphrey that the deed from William H. Belote and wife to Jeremiah W. Duncan was delivered on or about the 24th day of November, 1853; also that the deed of Thompson Smith and wife to Sanford Baker of the 25th day of February, 1871, was delivered prior to the 29th day of May, 1871, said deeds referred to in the bill in this cause.

It is admitted that in July, 1873, Sanford Baker executed the deed to Hurds & Smith conveying the premises in dispute, and took back a mortgage from them to secure a part of the purchase-money.

122 TESTIMONY ON THE PART OF THE DEFENDANT.

WATTS S. HUMPHREY:

I heard Mr. Roblin's testimony. Mr. Roblin did not employ me, as he states, to draw the contract. Hiram D. Hurd employed me on behalf of Hurds & Smith. I had not at that time any general employment from Mr. Baker, neither general nor any other kind. I had not had any employment from Mr. Baker for some time previous to this. I had only drawn two or three deeds for a year, besides other contracts. I had been employed adversely to him in suits in court, and considered Mr. Bell his attorney. When Mr. Roblin spoke to me first about purchasing the Chapman title he did not say anything about my being employed as Mr. Baker's attorney. He did not claim that I should hold that title in trust for Mr. Baker or him. I heard his testimony to what took place at the time the contract was signed. He did not ask me any questions at that time about the title. I think Hurds & Smith spoke to him about the mortgage to Mears & Bates, and he said that Mr. Baker would see to that, or made some statement satisfactory to that. Hurd never in his presence asked me to make an abstract to the title of the land. When he did ask me it was in the Benton House, and we were alone

together, and he expressly told me to keep it to myself and not let Roblin know it. He at the same time employed me to draw the contract. He said that Roblin was wiffling about the trade and was using Robinson & McCleod to raise the price on them. He said Roblin had offered it to him for seven thousand dollars, and the next day he told him (Hurd) that Robinson & McLeod had offered him eight thousand, and that he could not let them have it for less than that; that he would bring him in the next morning and I should take down a memorandum of the bargain to fasten him, and I could take time to look up the title.

The next morning, about nine o'clock, Mr. Hurd brought Mr.
123 Roblin into my office. I asked Roblin to state the agreement between Hurds and him. He did so, and I took it down in writing. I then told him that it would be three or four days before the contract would be ready, but I would let him know when he could come in and sign it. I immediately went into Mr. Bell's office that morning, and ordered the abstract of title from either Mr. Bell or Mr. Taylor, and told them, whichever it was, to keep it to themselves; I think it was Mr. Bell. That same night, or next morning, I got the abstract. Mr. Taylor handed it to me. I immediately examined the abstract and found the defect in the title. I then notified Hurds & Smith and showed them the abstract and defect, and told them that Sanford Baker had no title. Hurd brought Roblin in a second time to have the contract signed. I notified Hurd when the contract was completed.

WATTS S. HUMPHREY.

DEWITT C. HOLBROOK, being duly sworn, deposes and says:

I am the complainant's solicitor in this cause. I have acted as counsel in the ejectment suit mentioned in the bill. I think I know the question in controversy in each case. I think the defence in the ejectment case, and the right to relief in this case, depend upon the same state of facts. The ejectment case has been tried twice. I was present at both trials. Testimony was introduced to some of the points to which testimony has been introduced in this case. The evidence as to the drawing of the deed of Sammons, by Chapman to Belote, was introduced into the ejectment suit. There was no evidence actually introduced as to that point. Mr. Metivier was sworn and asked as to whether Chapman drew the deed or not. He answered that he could not tell. John Vincent was not sworn to that point, as I understand. Mr. Metivier was asked about the same in this. Mr. Vincent was not questioned as to this point. The only difference is that in this case I have examined
124 two witnesses and in that case only one. Metivier then, although questioned in that case, gave no evidence which, I think, tended to show that Chapman drew the deed. I think there is no other point to which witnesses have been examined in this to which they were not in that. Before filing this bill I filed one in the circuit court for the county of Cheboygan for substantially the same purposes. It was filed against Watts S. Humphrey as one of the defendants, and George P. Humphrey and Bela Chapman. I believe, as near as I can state, this is the only difference. On that bill, I think, I did not obtain an injunction and prevent a trial of the ejectment suit. The bill was not answered, and I think it was not demurred to. I am now inclined to think that it was demurred to, and dismissed by me. I think it was not demurred to by Bela Chapman and answered by George P. Humphrey. It was dismissed about ten days before this bill was filed. The ejectment suit is still pending. Baker had not deeded when this bill was filed. The paper shown me is a warranty deed by him of all his in-

terest in the premises to the defendants Hurds & Smith, dated the twenty-fourth day of October, 1872. I think the deed was not delivered till July, 1873. This bill is not filed in behalf of Hurds & Smith, or at their request. They refused to file a bill for this purpose. They said they didn't want any litigation about the matter. They refused before this bill was filed. Sanford Baker is not in the possession of the premises in dispute in this case, at this time. I think he was in actual possession at the time the bill was filed by Hurds & Smith as tenants. On the first trial of the ejectment suit judgment was rendered in favor of the defendant on the ground that the defendants were in possession, claiming under the mortgage given by Chapman to Scott. I suppose Mr. Baker defended that suit. He claimed as a defence that he was entitled to that mortgage by reason of the conveyances through which he claimed the property. He claimed at that time that he was
125 entitled to payment of that mortgage before he could be dispossessed. It was so held by the circuit judge, and the case was removed to the supreme court, and the judgment was reversed. On the second trial there was a judgment for the defendant. I think it was on the ground that George P. Humphrey purchased these premises, from information gained from Watts S. Humphrey, who acted as attorney for Hurds & Smith in the purchase of the premises by them. I defended the case at the request of Mr. Baker. I claimed on that trial to be entitled to the benefit of the deed to George P. Humphrey on account of the connection of Watts S. Humphrey with the purchases. The circuit judge*d* charged the jury accordingly; which was removed to the supreme court, where the judgment was reversed.

Cross-examined:

I asked Hiram D. Hurd and Mr. Smith in my office leave to file a bill for them against George P. Humphrey, and claimed the benefit of the deed from Chapman to him. They told me that they did not want any litigation about the matter; that they considered it was the duty of Mr. Baker to make that title good. I then told them that if they did not file a bill that Mr. Baker would be compelled to, and this bill was filed accordingly.

(This was all taken under objection.)

Redirect:

This conversation was with David Smith and Hiram D. Hurd, probably a month before this bill was filed. The bill in the Cheboygan circuit was then pending; the first bill was not filed on their request nor with their knowledge.

D. C. HOLBROOK.

GEORGE BELL:

I have known these lands ever since I have been here, six years. I have seen parties on them to work there before Hurds & Smith took possession. They were not enclosed; they appeared to be a com-
126 mon. The use that I saw made of them might or might not be such use as is made of a common; I don't think it was continued. I don't think the persons I saw on it claimed title to it. It has never been enclosed since I knew it, until Hurds & Smith enclosed it.

Cross-examined:

I have noticed in summer seasons the premises were frequently being used.

GEO. W. BELL.

SANFORD BAKER, being duly sworn, deposes and says:

I am the complainant in this case. I don't think I had anything to do with the sale of these premises to Hurds & Smith, only through Mr. Roblin. I did not personally employ one Watts S. Humphrey, of Cheboygan, to draw a contract with Hurds & Smith. I think Mr. Humphrey was doing all of my business at that time.

Q. Had he at that time received from you any general business retainer or employment?

A. I don't know what that means; he was the lawyer, and doing our business or my business; he had been making some deeds. There was some property exchanged with Patterson; he did the business, he drew the deeds; I think he made one for Mr. Patterson, and one for me. I can't say how long that was before the sale to Hurds & Smith; don't know what services he rendered, & only know from the bill.

Q. Did you understand by his drawing the deeds to Patterson and others that he became so bound to you that he could take no employment against you in the future?

A. I don't know that I understood anything of the kind. I don't think that I had any suits pending in Cheboygan County at the time of the sale to Hurds & Smith; I might have had some less than a year before Mr. Humphrey was my attorney; in the last I had, I think.

127 Q. What reason have you for thinking so?

(Objected to as irrelevant.)

A. Because I don't recollect having any litigation after he stopped. I mean by that, that Thompson Smith, when he became interested in the property, he had the entire charge and I had no more to do with it. I should think that this was a year or more before the sale to Hurds & Smith; I don't think he did any more for me after that. I had no business except a few little matters, drawing deeds and contracts; I had no litigation that I recollect of. I don't recollect anything about employing Humphrey after the contract with Thompson Smith, up to the time of the sale to Hurds & Smith. Mr. Roblin attended to my business here. I think Mr. Bell had drawn deeds within a year from the sale to Hurds & Smith. I can't say whether he had done as much as Humphrey or not. I had not contract with Bell, but considered him morally bound to take nothing against me. I had no contract with Humphrey. I think while Humphrey was doing the business we always went to him; I don't know whether we did business with Bell until Humphrey ceased to do business for us. I don't know whether Bell was ever bound to us. I consider that Bell was morally bound not to take anything against me before this litigation commenced, I couldn't say how long before.

Q. Was it a year before?

A. I have no very distinct recollection of it; Mr. Roblin managed this business, and I didn't know much about it. I don't know anything but the Patterson matter in which I employed Humphrey. I was at one time interested with Thompson Smith; I was joint owner with Thompson Smith after the contract spoken of. I don't know anything about this bill. I authorized Mr. Holbrook to proceed as he pleased. I don't recollect seeing the bill in this cause before it was filed. I think I had filed another before this; I think that bill was sworn to by me.

Q. Did you swear that you employed Humphrey in that bill to examine the abstract to the title of that property?

(Objected to as incompetent; the bill is the best evidence.)

A. I could not now tell what I swore to, without seeing the bill.

128 Q. Whether before the drawing of the contract to Hurds &

Smith you employed Humphrey to make or to procure to be made an examination and abstract of the premises in dispute?

A. I so understood that from Mr. Roblin. I did not employ him personally; I was not present when anybody else employed him. I knew nothing about it except what I heard from Mr. Roblin.

Q. How did you come to swear to that positively, and not on information or belief?

(Objected to as impertinent to the parties' witness.)

A. I stated the facts to Mr. Holbrook, and he drew the bill and I swore to it as far as I knew them; he prepared it, and I did it.

Q. Can you give any other reason for swearing to that positively, except that Mr. Holbrook advised you to?

(Objected to as insulting to the witness.)

A. I don't know as I can give any other reason. I told Mr. Holbrook just how the facts were as near as I could. I don't recollect whether I told him that I only had it from Roblin and didn't know it personally. I don't know whether I told him I was not here at the time of the sale, or whether he knew it. I made a full statement of the facts as near as I had them, but not whether I knew or had been merely informed of them. I think I was at Lansing when the first bill was drawn.

Q. Was that bill presented, and an injunction obtained upon it?

(Objected to as incompetent and irrelevant, the records of the court being the best evidence.)

A. I brought the bill up here and it was filed; I don't know what was done with it afterwards.

Q. Did you know, when it was swore to it was to be used to obtain an injunction?

(Objected to as irrelevant.)

A. I think I knew that was the intention.

Cross-examined:

Q. Was there a contract or a mere understanding between you
129 and Thompson Smith, as joint owners of the property, that he should have the management thereof?

A. I think there was some sort of a written agreement about it. I was still equally interested in the property with him. I have never resided in Cheboygan. Mr. Roblin has been my agent to attend to my business. I did not know what service Watts S. Humphrey had rendered to me until he rendered his account. I visited Mr. Holbrook at Lansing for the purpose of seeing him about the deed from Chapman to Humphrey. I arrived at Lansing, I should think, some time in the evening; I should think it was as late as seven o'clock. I think I left there *there* the forepart of the next day; I should think it was about 9 o'clock in the morning; I know it was in the early part of the day. The bill was drawn during the time I was there. I remember being in Mr. Holbrook's office with Hiram D. Hurd and David Smith. I heard Mr. Holbrook ask them to file a bill claiming the benefit of the deed from Chapman to George P. Humphrey; they said they didn't want to do it; they were not in the situation; they said their situation in business was such that they didn't want to go into litigation, and their position was good as it was. Mr. Holbrook then informed them that I would be compelled to file a bill. They were then informed that they would be made parties to the suit.

Redirect:

They said they had no objection to that so long as they didn't have

any costs to pay. I think that was all the arrangements; did not see them sign any paper; I don't know whether they have ever signed any paper or not; they wouldn't file the bill themselves, but were willing I should.

Q. It was understood that the Humphrey title, if procured, should be for their protection; or did you intend to hold it adversely to them?

A. I intended it for their protection. I asked them to file the bill because they were holding the property and had possession of it. They did not tell me that they had consented to Humphrey's purchase,
130 and could not file a bill. They did not tell me he had spoken to them about it before he purchased. I did not know there was any understand' between them and Humphrey at the time for the purchase of the Chapman title. I have no other understanding with them, or either of them, only the contract for the sale and the deed and mortgage.

Q. In the deed from Chapman to Humphrey are there any lands included besides the land in dispute?

(Objected to as incompetent, the deed being the best evidence.)

A. I suppose there are some other lands. I do not make any claim to the other lands, only what my deed calls for. I never had any arrangement with or contract or deed from Bela Chapman. I had never paid anything for his title. I don't think I ever demanded a deed from Chapman before his sale to Humphrey; don't know of any reason why he should have deeded to me before he deeded to Humphrey. I never knew he had any claim to it; I never made any claim on Chapman for it. I knew in the deed conveying this land to me and others this land was excepted from the covenants of warranty. I was told there was a mortgage from Sammons to Donsman might come against it. We had an abstract of title when we purchased this property. I think I saw the abstract at the time we purchased. I think we got Mr. Holbrook to look it up. He did not tell me that Chapman owned that piece of land. I don't think he said anything about the title to this property except as to the Donsman mortgage.

Recross-examined:

I never knew until after the sale to defendants Hurds & Smith of any defect except the mortgage; and, if I had, I would not have allowed it to be sold.

Redirect:

I don't recollect that when I purchased I knew anything of Chapman having drawn any deeds from Sammons to Belote.

SANFORD BAKER.

131 SYLVESTER SAMMONS, being duly sworn, deposes and says:

I have lived in Cheboygan about thirty years; am the son of Jacob Sammons; I know Bela Chapman; I remember his moving from Mackinac to Cheboygan; I don't remember exactly where he went to live when he first came here; I think to where his son-in-law lived, where my brother Frank lives now; I know the old log house situated on the premises in dispute in this suit; I don't think he lived in that after he came over; at the time he came over it was being used as a coopershop by my father; I was living with my father then; he stored a part of his things there until he finished his house; I think he took a part of his things away in the course of two or three days after; the

mill co. let him have oxen in two or three days with which he drew his things up to his son-in-law's; I was at the old house more or less every day; a family could not well be living in it without my knowing it; I have known the premises well for the last twenty years, and have seen them frequently; I should think, during that time, they have been enclosed two-thirds of the time; the rest of the time they have been common; there was an agent here looking after them, paying taxes, and such like.

Cross-examined:

My father owned these premises at one time. He told me he bought from the government. I could not say how many acres there are in it. There was, I think, about thirteen acres included in what was known as the mill property. The piece in dispute is a part of the thirteen acres. The mill was built by my father. He was in company with a man named McKinley. The mill was built after I came here; I helped to build it. I think the mill was not running when Chapman came over here to live; it had run before that. I think my father had let it out once or twice before he sold to Belote; he had the control of it until then. I think Belote run it afterwards; it was idle when he sold it to Duncan. I could not very well tell how long it was after I came here to live that Chapman came; it might have been three or four, or maybe five years. I don't remember the year Chapman came over here to live. I don't
132 know that there (h) as been any time since Belote sold to Duncan but what there has been some one here acting as agent for the owner of the property. I never knew of Chapman claiming to own that property; that is something I know nothing about. I cannot tell what year it was I came over.

Redirect:

I took the old chimney out of the old house by my brother's permission two years ago; it had fallen in and gone to ruin; the side of the building had fallen it; it was used by any one that came along that wanted it; there was nothing in it at the time.

SYLVESTER SAMMONS.

It is admitted by complainant's counsel that in suits commenced by Thompson Smith on behalf of himself and complainant after the arrangement between him and complainant, and the only litigation which they had in Cheboygan County, George W. Bell appeared for them, and Watts S. Humphrey contra, and these suits were before the sale to Hurds & Smith.

It is admitted, under objection, that in the only litigation which Mr. Roblin had (the agent of Mr. Baker), Mr. Bell appeared for him and Mr. Humphrey contra.

Exhibit D, herewith attached, is admitted to be a correct copy of an account rendered by Watts S. Humphrey to George Roblin for services.

JOHN ATKINSON, being duly sworn, deposes and says:

I was present with Watts S. Humphrey when he purchased the land in question of (f) Bela Chapman. I had before that time heard him
133 state to Hiram D. Hurd that Bela Chapman appeared, by an abstract which he then had, to be the owner of the land now in dispute. I had, also, before that time heard said Hurd tell said

Humphrey that they (Hurds & Smith) had concluded to buy from Baker, and trust to his covenants; and that he said Humphrey might, if he saw fit, buy the land in question, as they would have nothing to do with the Chapman title. At the time of the purchase from Chapman he said he was the legal owner of the land, having received the deed of Scott, which appears of record, and never conveyed it to any one.

(The above is objected to as incompetent and irrelevant.)

Cross-examined.

I don't know whether I examined that abstract before the purchase or not. I think I did. I may have been asked some questions by Hurds & Smith, or by Mr. Humphrey, in their presence. I was not regularly consulted. I knew of the defect in the title. I drew the deed of Chapman to George P. Humphrey.

JOHN ATKINSON.

The original bill filed by the complainant in the circuit court for the county of Cheboygan in chancery with the calendar entries in said cause are offered in evidence and a copy thereof attached marked Exhibit E and F.

(Objected to as irrelevant by complainant.)

SAMUEL H. TAYLOR, examined by consent before Geo. W. Bell, notary public, being duly sworn, says:

I know the parties to this suit. I know Mr. Roblin. I made the abstract of the title of the premises in dispute for Mr. Bell. I had a conversation with Mr. Roblin in relation to the title to the lands in question about the time of the purchase by Hurds & Smith. I met Mr. Roblin in the drug store, and he spoke to me about the sale. He asked me whether I did not think they had made a good sale. I replied that I did not know. I was not acquainted with the lands here as to their value. I remarked it was all right if the title was good, but there was a defect in this. That there had been a deed given to a man by the name of Chapman. He remarked that the title was all right. I can't state whether I stated by whom the deed had been given to Chapman. It must have been within a few days after I made the abstract that this conversation occurred. I think it was before Humphrey purchased. I can't say whether it was before Mr. Roblin signed the contract; don't know when he signed it. It was somewhere about the time that the abstract was made. That was all Mr. Roblin said.

134

Cross-examined:

Mr. Roblin did not tell me what he had sold the premises for. That was all I knew about it was Mr. Roblin asking me if I did not think they had made a good sale.

Q. Did you not understand from Mr. Roblin by his asking you that question that the sale was closed?

(Objected to as incompetent.)

A. I did. I don't think I told Roblin that I had made an abstract of the premises.

SAMUEL H. TAYLOR.

135 In the circuit court of the United States for the eastern district of Michigan. In chancery.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, CHARLES A. HURD, Hiram D. Hurd, and David Smith.

The above testimony was taken by stipulation and may be read on the hearing of said cause subject to objections made.

D. C. HOLBROOK,
Sol'r for Compl't.
ATKINSON, HAWLEY & ATKINSON,
Sol's for Def't Humphrey.

AUG 7, 1875.

136 EXHIBIT A.

Sanford Baker, to W. S. Humphrey, Dr.

1871.			
Jan'y	5th,	to retainer vs. Brannock	3 00
	" " " "	Vincent	3 00
July	12th,	" col. of D. Smith	6 00
	"	" con't S. Peters	1 50
	" " "	Crumley	1 50
	15,	" " & copy McQuaine	2 00
	18,	" col. $600 vs. D. Smith	12 00
	"	" deed to McQuaine	2 00
	26,	" " " Legault	2 00
	"	" con't & copy Kime	2 00
Oct.	2,	" " " " J. E. Nichols	2 00
'72			
Feb'y	19,	" deed to Nichols	2 00
April	8th,	" " " Patterson	2 00
June	12th,	" con't & copy Hurds & Smith	2 00
	Total		$43 00

Sanford Baker, Cr.

'71.			
July	29th,	by cash of Roblins	$5 00
		Bal. due Humphrey	$38 00

137 EXHIBIT B.

Baker, Mears & Co., to W. S. Humphrey, Dr.

1870.			
May	23rd,	to suit vs. John Hetherington	$5 00
		" petition to Duncan school inspect'	1 00
	Am't due		$6 00

EXHIBIT C.

Baker & Smith, to W. S. Humphrey, Dr.

1870.			
June	10th,	to services at school meeting	5 00
Sept.	2nd,	" 3 disch'g's of m't'g	4 50
"	5,	" services at school meeting	5 00
"	6,	" drawing deed	1 50
"	10,	" ex. records in Milliken case	2 00
Oct.	1,	" notice to quit on Vincent	1 00
	22,	" attachment case	5 00
Dec.	22,	" case vs. Horne	5 00
1871.			
June	13th,	" " " Barber	5 00
	29,	" col. on m't'g vs. Couchois	13 50
	30,	" dis. of m't'g	1 50
			$49 00

Credit.

Nov.	19,	by cash, John McKay	$81 96
		Bal. due Baker & Smith	$32 96

138 EXHIBIT D.

George Roblin, to W. S. Humphrey, Dr.

1870.			
May	14th,	to 2 original notices & copies on Culver & Hoyt	5 00
Sept.	9th,	" settlement at Mrs. Schwartz'	2 00
Nov.	13th,	" contract & copy for Posts	2 00
	28,	" " & " " McGulpin	3 00
Jan.	4,	" " & copy to Dodge	2 00
			$14 00

Credit.

		By balance on cutter	27 50
		Bal. due Roblins	13 50

139 EXHIBIT E.

In the circuit court for the county of Cheboygan, in chancery:

STATE OF MICHIGAN,
County of Cheboygan:

To the circuit court for the county of Cheboygan, in chancery.

Your orator, Sanford Baker, of Belleville, in the Province of Ontario, Dominion of Canada, respectfully shows that on or about the thirteenth day of October, 1846, one Jacob Sammons purchased of the Government of the United States that parcel of land now situate in the county of Cheboygan, State of Michigan, described as the southwest part of

the southwest quarter of section twenty-nine, in township thirty-eight north, range one west, and which parcel of land, being a fraction, was and is some times known and described as lot three (3) in said section. That thereby the said Jacob Sammons became the legal and equitable owner of said premises.

That afterwards said Sammons, in the year 1849 or 1850, conveyed by warranty deed the said premises to one William Scott and his heirs, who in the year 1851 conveyed the same to one Bela Chapman, in fee-simple. That said Chapman made, executed, and delivered to said Scott a mortgage on said premises for the sum of three thousand five hundred dollars, the whole of the price therefor. That said Chapman, although said deed was executed to him and he gave such mortgage, never took possession of said premises, nor did he ever claim to own the same, but he received said deed and gave said mortgage at the instance of and convenience of said Scott, and said Scott remained in possession of said premises and treated, claimed, and used said premises as his own, as though said deed to said Chapman had never been made.

140 That afterwards said Scott assigned said mortgage so given by said Chapman to said Jacob Sammons, who took possession of said premises. That afterwards, in 1851, said Sammons assigned said mortgage to one Michael Dansman, now deceased, and in the year 1852 said Sammons conveyed said premises to one William M. Belote, who in 1853 conveyed the same to one Jeremiah Duncan, deceased.

That afterwards one Walter Crane was by the circuit court for the county of Cheboygan, in chancery, in a proceeding pending in said court, duly appointed receiver of all and singular the real estate and effects of the said Jeremiah W. Duncan, deceased, and thereby said Crane became seized of said premises under the direction of said court. That said Crane, under and in pursuance of the directions of said court, afterwards, and on the 13th day of July, 1865, conveyed said premises to John McArthur, who, on the 6th day of October, 1866, conveyed the south part of the said premises, being twenty-eight rods in front on the left bank of the Cheboygan River and the same width westerly across the whole of said lot, to your orator, Robert Patterson and Archibald C. Thompson. That said Robert Thompson and Archibald C. Thompson afterwards, by separarate conveyance, conveyed two-thirds of the part of the said land last described to Nathan Mears and Edward Bates, and you orator. That afterwards said Mears & Bates conveyed all their interest in said premises to one Thompson Smith, who in the year 1871 conveyed the one half-interest in and to said premises last described to your orator, whereby your orator became the owner, as he claims, of the whole of the said south half or part of said parcel of land, being twenty-eight rods front on the west bank of the Cheboygan River and the same width on the west side of said lot.

Your orator further shews that the above and foregoing matters, "except those to which he was a party," are stated upon his information and belief, from such knowledge as can be derived from the record of deeds for the county of Cheboygan and Mackinac, and from inquiries made in relation thereto, to parties who had knowledge of the same. That to said record of said deeds and mortgages in said counties, of said several mortgages, assignments, and deeds, conveying said

141 premises, your orator prays leave to refer for greater certainty, and to said records or copies thereof when proved he prays leave to make a part of this bill.

Your orator further shows on information and belief, that said Chapman not only never claimed any title in said premises, but actually

drew, witnessed, and as a notary public, took the acknowledgment of several of the deeds, mortgages, and other instruments, executed by other parties long after the said conveyance to him, well knowing and intending the same should operate as conveyances of said premises to the grantee therein.

Your orator further shews that on the seventh day of June, 1872, your orator entered into a written contract with Charles A. Hurd, Hiram D. Hurd, and David Smith, of Cheboygan, to sell and convey said premises to them for the sum of eight thousand dollars. That such sum was payable in instalments, extending to August 1st, 1875, when he was to execute to them a deed of said premises, on the payment of said money. That said Charles A. and Hiram D. Hurd, and said Smith, under and by virtue of said contract, about the day of the date thereof, entered into the possession of said premises, under your orator, and still are now in the actual possession of said premises and have made large improvements thereon, and to the amount of nearly if not quite two thousand dollars. That said premises are as your orator alleges worth at least eight thousand dollars, exclusive of said improvements.

Your orator further shows that he has for some time last past, employed, as he required from time to time, one Watts S. Humphrey, who claims to be and is, as your orator believes, an attorney at law, residing at Cheboygan, in the county of Cheboygan aforesaid, to draw deeds and papers, and advise your orator about legal matters. That said Humphrey drew the contract between your orator and said Hurds & Smith, for your orator. That but a few days before the drawing said contract, your orator employed said Humphrey to make or procure to be made an examination and abstract of said premises so contracted to be sold to said Hurds & Smith; that in so doing, said Humphrey dis-
142 covered that the records did not show any conveyance by deed of said Bela Chapman to any one of said premises, and in fact that said Bela Chapman had not executed any instrument affecting said lands, except said mortgage to said Scott. That said Humphrey, without reporting such discovery to your orator and without the knowledge or consent of your orator, applied to said Chapman for a deed of said premises, and by some kind of inducement prevailed on said Chapman to execute, and he did execute on the 10th day of June, 1872, a quit-claim deed of said premises to one George P. Humphrey, the brother of said Watts S. Humphrey, and which was recorded in liber D of deeds, page 143, in the register's office for said county. That at the time said deed was executed to said George P. Humphrey by said Chapman, said George P. was absent and knew nothing thereof, yet he now claims to be the owner of said premises, and on the 1st day of July, 1872, commenced a suit by declaration filed in the circuit court for the county of Cheboygan, in ejectment against said Charles A. Hurd, Hiram D. Hurd, and David Smith, to recover the said premises, described therein as the south part of lot three of fractional section number 29, in township thirty-eight north of range number one west; said piece of land twenty-eight rods front on the west bank of Cheboygan River, and the same length on the back side of said lot.

Your orator further shews and claims that the taking of said deed by said George P. Humphrey was at the instance and was the act of said Watts S. Humphrey, who was then acting as the attorney and agent of your orator, which the said George P. well knew, and they fraudulently contrived together, to cheat and defraud your orator out of said land. That their acts and doings in the premises are dishonest and intended as a fraud on your orator.

Your orator further shews that he is informed and believes and charges the fact to be that from the date of the deed, to wit, the 29th day of February, 1851, the said Scott and those under whom your orator
143 claims title and possession, have been in the actual, open, and notorious possession of said premises and have claimed title thereto, and said Chapman well knew the facts, and he not only acceded thereto, but disclaimed to have any right, title, or interest therein, and admitted that such parties and persons who have had possession were such owners in fact, and when said Watts S. Humphrey applied to said Chapman for such deed, he informed said Humphrey that he had no title or interest in and to said premises, and if he did give such deed it would not convey any right or title in said premises.

And your orator claims and insists that by virtue of the statutes of this State he is entitled to the benefit of the statute of limitations of this State by reason of the possession of said premises by the persons through whom your orator claims, and he also claims that said George P. Humphrey is not entitled to claim or hold and interest in said premises by the fraudulent practices of said Watts S. Humphrey.

Your orator, therefore, prays that the said George P. Humphrey may answer "without oath" all and singular the matters herein repeated, and that the deed so executed by said Bela Chapman to said George P. Humphrey be declared to have been fraudulently obtained as against your orator, and that he be decreed to execute a release to your orator, and that said Chapman be decreed to execute to your orator a deed of said premises of all the right, title, and interest in said premises, and that said George P. Humphrey be enjoining and restrained from prosecuting the said suit in ejectment against your orator, and that your orator's title to said premises be quieted, and that your orator have such other or further relief in the premises as shall be equitable and just, and that your orator have his costs in this behalf.

May it please the court to grant to your orator the writ of injunction of this court enjoining and restraining the said George P. Humphrey as above prayed, and also a writ of subpœna directed to the said
144 George P. Humphrey and Bela Chapman, commanding them to be and appear in this court and answer this bill and to abide the order and decree of the court herein.

SANFORD BAKER.

D. C. HOLBROOK, *Sol'r.*
G. W. BELL,
Of Counsel for Compl't.

STATE OF MICHIGAN,
County of Cheboygan:

On this twentieth day of July, A. D. 1872, before me personally appeared Sanford Baker, the complainant named in the above bill, and being by me duly sworn, deposed and said that he has read the above bill and knows the contents thereof, and that the same is true of his own *own* knowledge, except as to the matters therein stated to be on his knowledge and belief, and as to those matters he believes it to be true.

MEDARD METIVIER,
Deputy County Clerk, Cheboygan County, Mich'n.

(Bill endorsed:) Filed July 20th, 1872, 2 o'clock p. m. Medard Metivier, dep'y clerk.

145, 146 *Calendar entries.*

In the circuit court for the county of Cheboygan. In chancery.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY AND BELA CHAPMAN.

July 20th, 1872.—Bill filed.
" " " Bond for costs filed.
" " " Subpœna issued.
" 31st, " Subpœna returned.
August 10th, " Demurrer of Chapman filed.
" 12th, " Answer of Humphrey filed.
January 6th, 1873.—Order of discontinuance entered.

147, 148 In the circuit court of the United States for the eastern district of Michigan. In equity.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, CHARLES A. HURD, Hiram D. Hurd, and David Smith.

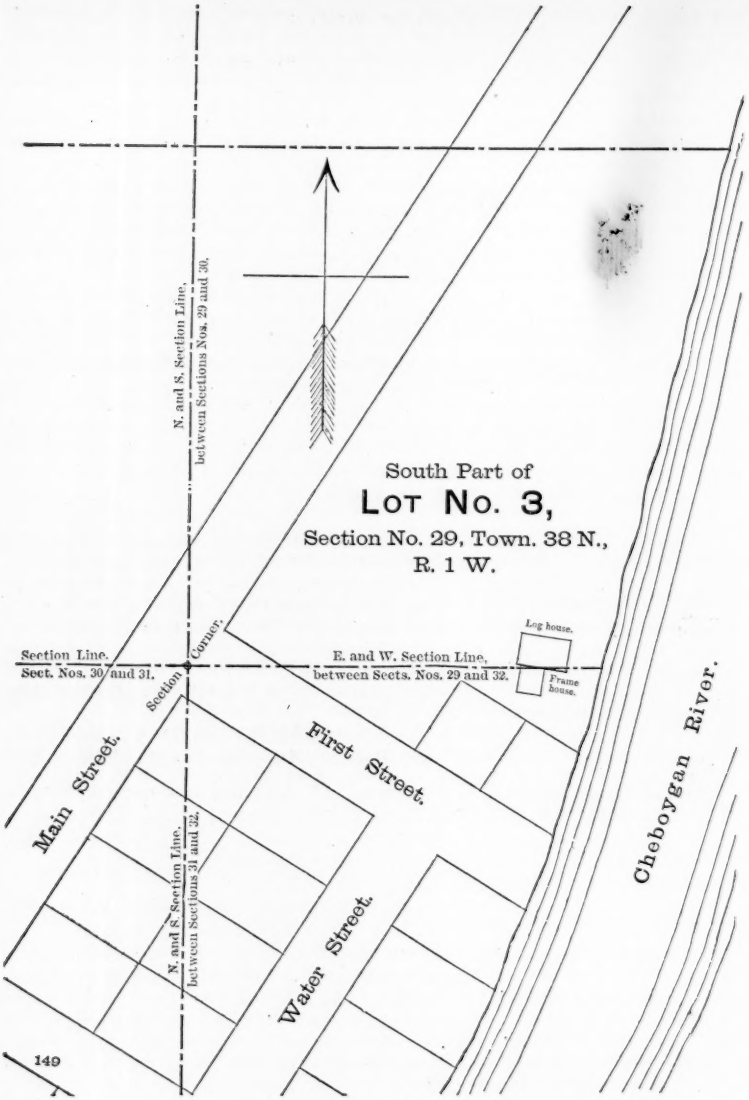
I, Samuel H. Taylor, a notary public in and for the county of Cheboygan and State of Michigan, duly commissioned and qualified under the laws of the United States to take depositions for use in the circuit courts of the United States, do hereby certify that the foregoing testimony, except that of Samuel H. Taylor on part of the defendants, was taken before me in accordance with the foregoing stipulation, signed by the solicitors of the respective parties to the above-named suit.

In testimony whereof I have hereunto set my hand this seventh day of August, A. D. 1875.

SAMUEL H. TAYLOR,
Notary Public, Cheboygan County, Michigan.

(Testimony endorsed:) Rec'd from P. O. Aug. 30, and opened in open court and filed Sept. 6, 1875. A. Mandell, cl'k.

149, 150



151 At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court room, in the city of Detroit, on Wednesday, the twenty-ninth day of September, in the year one thousand eight hundred and seventy-five—

Present, honorable Holmer H. Emmons, circuit judge, & honorable Henry B. Brown, district judge.

SANFORD BAKER, COMPLAINANT,
vs.
GEORGE P. HUMPHREY, CHARLES A. HURD, Hiram D. Hurd, & David Smith, def'ts. } 1631. In equity.

This cause now coming on to be heard upon pleadings and proofs, the court now deny the motion of complainant for leave to amend complainant's bill heretofore made in the cause, and the cause is now heard upon pleadings and proofs, the same being argued in part by counsel for the respective parties, and continued for further hearing.

152 At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district court-room, in the city of Detroit, on Saturday, the second day of October, in the year one thousand eight hundred & seventy-five—

Present, honorable Holmer H. Emmons, circuit judge, & honorable Henry B. Brown, district judge.

SANFORD BAKER, COMPLAINANT,
vs.
GEORGE P. HUMPHREY, CHARLES A. HURD, Hiram D. Hurd, & David Smith, defendants. } 1631. In equity.

This cause again coming on to heard upon pleadings and proofs, the arguments of counsel are concluded, and cause submitted to the court for decision.

153 At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court-room, in the city of Detroit, on Tuesday, the fifth day of October, in the year one thousand eight hundred and seventy-five—

Present, honorable Holmer H. Emmons, circuit judge.

SANFORD BAKER, COMPLAINANT,
vs.
GEORGE P. HUMPHREY, CHARLES A. HURD, Hiram D. Hurd, & David Smith, defendants. } 1631. In equity.

This cause having been brought on for final hearing, and the complainant moving the court for leave to amend the bill in this cause, and the same being considered by the court, leave is hereby granted to the complainant to amend the bill in this cause upon condition of payment by complainant of all the costs of defendant to date, as on final hearing and dismissal of bill, without prejudice; that said amendments be made in ten days, and that defendant Humphrey cause his answer to be filed twenty days after service of a copy of said amendments;
154 that thereupon the case be put at issue, and sixty days thereafter allowed to take proofs by either party; that the proof already taken be read in evidence on the case as amended.

155 *Amended bill.*

In the circuit court of the United States for the eastern district of Michigan. In equity.

To the judges of the circuit court of the United States for the eastern district of Michigan. In equity.

First. Sanford Baker, of Belleville, in the province of Ontario, Dominion of Canada, an alien and subject of the Queen of the United Kingdom of Great Britain and Ireland, brings this bill, as amended by leave of the court, against George P. Humphrey, Charles A. Hurd, Hiram D. Hurd, and David Smith, of Cheboygan County, Michigan, and citizens of the State of Michigan, residing in said eastern district.

Second. And thereupon your orator complains and says that heretofore, and on the twenty-seventh day of February, A. D. 1851, one William Scott was the owner, and for a long time prior thereto had been in possession of the southwest part of the southwest quarter of section twenty-nine, in township thirty-eight north, range one west, in Cheboygan County aforesaid, and which, being a fraction, was known and called lot three in said section; that on the day last aforesaid, said Scott, by a warranty deed, conveyed said premises to one Bela Chapman, which deed was duly *duly* recorded in the office of the register of deeds for county of Mackinaw, in said State, on the 8th day of March, 1851, in book one, page 299.

Third. That on the same day of the date of said deed said Chapman, to secure the purchase price thereof, made and executed and delivered to said Scott his certain mortgage on said premises, by which
156 he conveyed the same to said Scott and his heirs, with a power of sale contained in said mortgage, and which also contained a condition that if the said money secured thereby should be paid, then said mortgage should be void. But in case of non-payment of said money, then said Scott, or his assigns, were empowered to proceed and sell said premises under said power, which said mortgage was also recorded in said office of register of deeds for said county of Mackinaw, the day of March, A. D. 1851, liber one, page 9.

Fourth. That said Chapman never took possession of said premises, but said Scott and those claiming through and under *under* him by said mortgage and deed, took possession, and have ever since the giving of said mortgage been in actual possession of the whole of said premises, and claimed to be the sole owners thereof.

Fifth. That on the 29th day of November, 1851, said Scott assigned said mortgage to one Jacob Sammons, which assignment was on the 19th day of March, 1852, duly recorded in the proper registry of deeds, in book one, page 12; that afterwards said Sammons conveyed said premises to one William M. Belote. The same was afterwards by said Belote conveyed to one Jeremiah W. Duncan, who, on becoming deceased, one Walter Crane was appointed receiver of all his, said Duncan's, estate, by the circuit court for the county of Cheboygan, in chancery, in a cause pending therein, wherein was John A. Duncan as complainant, and Jeremiah Woolston, Alfred D. Woolston, John R. McLeod, Richard B. Duncan, Charles Duncan, Henry B. Duncan, Elizabeth Duncan, John A. Duncan, and William Duncan were defendants, and by virtue of and under the authority of said court said Crane sold and conveyed said premises to John R. McArthur, Lucius Southwick, George W. Swan, and John F. McDonald; that said McArthur, Southwick, Swan, and McDonald afterwards conveyed their interest in the

south part of said premises to your orator, Robert Patterson
157 and Archibald C. Thompson, and said Patterson conveyed his interest in the south part to Nathan Mears, Eli Bates, and your orator, and said Archibald C. Thompson conveyed his interest in and to said premises to said Bates and Mears; that said Mears and Bates afterwards conveyed their interest therein to one Thompson Smith, who then became a joint and equal owner in common with your orator; that afterwards said Thompson Smith conveyed all his interest therein to your orator; that the several transfers and conveyances above referred to were duly recorded in the proper registry of deeds, where by law the same were respectively authorized and required to be at the time recorded; that many were recorded in the office of the register of deeds for the county of Mackinaw, to which county said county of Cheboygan was attached for judicial and other purposes, and the records were subsequently transcribed into the books of the register of deeds for the county of Cheboygan, to which said several deeds and the several records thereof, and the certified copies thereof, your orator prays leave to refer for greater certainty, and prays that the same may be taken as a part of this his bill.

Seventh. Your orator further shows that he has never been able to discover that the said Bela Chapman ever, except as hereinafter stated, made any conveyance of said premises other than said mortgage to said Scott; that said Chapman for years resided near said premises; that never having taken possession thereof, he knew that Scott and others were in open and notorious possession, and claimed the same adversely to him through and under the assignment of said Scott to said Sammons of said mortgage, and the several deeds hereinbefore referred to; that said Chapman never claimed any title to said premises; that he not only drew several warranty and quit-claim deeds of said premises,
158 but witnessed the same and others, and as notary public took the acknowledgements thereof without giving any notice of any claim, if any he had in said premises, through which your orator claims title.

Your orator alleges and submits that he was the legal and equitable owner of said premises, and he was the actual possession thereof until he entered into a contract hereinafter mentioned, to convey the same to the defendants Hurds & Smith; that even if said Chapman ever had any legal or equitable right or title to the same, the same was and is barred by the several statutes of limitation of the State.

Ninth. Your orator further shows that on or about the third day of June, 1873, the defendants, Charles B. Hurd, Hiram D. Hurd, and David Smith applied to your orator to purchase said premises, and your orator proposed to sell the same to them for eight thousand dollars, two thousand dollars payable August 1st, 1872, two thousand dollars payable August 1st, 1873, two thousand dollars payable August 1st, 1874, and two thousand dollars payable August 1st, 1875, with interest at eight per cent. per annum, to be paid annually, and which premises were worth that sum; which proposition they accepted. Your orator believed that he was the sole owner of said premises, and had good right to sell and convey the same: that on or about the third day of June aforesaid he employed one Watts S. Humphrey, of Cheboygan aforesaid, an attorney and counsellor at law, duly admitted to practice as such, and who was then and for a long time prior thereto had been the attorney of your orator, to draw a contract for the sale of said premises by your orator to said Hurds & Smith, and Humphrey did draw such contract, which was dated and signed the seventh day of

June, 1872, by which your orator agreed to execute and deliver to said Hurds & Smith, upon payment of said money, a good and sufficient deed or deeds, and thereby convey to said Hurds & Smith, and their heirs and assigns, a good and unencumbered title in fee-simple to the said premises, with their appurtenances; that such contract was duly signed by said Hurds & Smith, by your orator through his agent,
159 and the said Watts S. Humphrey subscribed the same as a witness thereto; that said Hurds & Smith entered upon and took possession of said premises on the day of signing and under said contract, and the said Watts S. Humphrey some time afterwards rendered your orator an account containing a charge for drawing said contract, and the same was paid to him.

Tenth. Your orator further shows that after said Humphrey was so retained and employed to draw said contract, and before the same was signed as aforesaid, the said Watts S Humphrey and the said George P. Humphrey, and the said Hurds & Smith, all of the defendants, ascertained the title of said premises (so far as the record showed the same) to be in said Bela Chapman, and that he appeared to be the true owner thereof, and the same was the subject of conversation between all of them. The liability of your orator to said Hurds & Smith, if he signed the said contract, and whether the title of said Chapman was good and valid, was discussed. That the fact of said title appearing to be in said Chapman and your orator's title defective was intentionally concealed from your orator by said Watts S. Humphrey and all the defendants, and your orator knew nothing thereof until after signing said contract. That said Watts S. Humphrey and said defendants knew that said Chapman resided but a short distance from Cheboygan, where said premises are situated, and they conceived the plan of secretly acquiring the title of said Chapman to said premises and thereby defeat your orator's title and said sale, and accordingly said Watts S. Humphrey, on the tenth day of June, 1872, for the small sum of twenty-five dollars, procured a quit-claim deed of said premises from said Chapman to be made to the said George P. Humphrey, a brother of the said Watts S. Humphrey, and who, while acting for your orator and before the signing of said contract, had informed said George P. Humphrey of all the facts of said intended sale and purchase, and of the situation of said title, and of his being so engaged to draw said contract.

Eleventh. That the taking of such deed to said George P. Humphrey was without his knowledge when *when* the same was executed,
160 and he had no knowledge thereof for a long time afterwards. That said Watts S. Humphrey conducted the whole business in procuring said deed, and after the same was executed he paid said Chapman the sum of twenty-five dollars therefor. That when he applied to said Chapman for said deed he informed him that he had not, nor did he claim to have right, title, or interest in and to said premises.

Twelfth. That said Watts S. Humphrey having procured said deed caused the same to be recorded in the office of the register of deeds for Cheboygan County, in book D of deeds, page 143, and to which record, or a certified copy thereof, your orator prays leave to refer, and he commenced a suit in ejectment in favor of said George P. Humphrey against said defendants, Hurds & Smith, in the circuit court for the county of Cheboygan, to recover said premises, and which suit is still pending undetermined. That the name of said Watts S. Humphrey appears in and on said declaration by which said suit was commenced, as the attorney for the plaintiff.

Thirteenth. Your orator further shows that said George P. Humphrey

claims that by virtue of said deed from said Chapman he is the owner of said premises, and that he will persist in prosecuting said suit. That your orator applied to said defendants, Hurds & Smith, to institute proceedings, as your orator claims it was their right and duty, to claim that said deed of said Chapman to said defendant George P. Humphrey enured to their and your orator's benefit. That they refused so to do, as also to take any steps or proceedings at law or equity in relation thereto.

Fourteenth. Your orator further shows that he, on the day of , 1872, tendered and is ready and willing to pay to said George P. Humphrey the sum of twenty-five dollars, and also offered to pay him any further sum that he paid said Chapman, and also the costs and expenses, if any, incurred in procuring said deed, which he refused. That your orator submits he was and is entitled to all benefit to be derived
161 from said deed, and that said Hurds & Smith are also entitled to the benefit thereof to maintain and support the title which they contracted for with your orator. That your orator has made several offers and attempts to procure a release from said George P. Humphrey of his pretended rights to said premises, all of which have been fruitless.

Fifteenth. To the end therefore that the defendants may, if they can, show why your orator should not have the relief hereby prayed, may, without oath, the same being hereby waived, according to the best and utmost of their several and respective knowledge, information, and belief, full, true, direct, and perfect answer make to all and singular the matters and things hereinbefore stated.

Sixteenth. That it may be ordered and *the* decreed the deed so executed by said Bela Chapman to said George P. Humphrey to have been obtained by him fraudulently, and for the use and benefit of your orator.

Seventeenth. That the said George P. Humphrey be ordered and decreed to make, execute, and deliver to your orator a release and quitclaim of all the right, title, and interest in and to said premises which he acquired by such deed, of such form and upon such conditions as shall be proper and equitable.

Eighteenth. That the said George P. Humphrey and his attorneys, solicitors, and agents be perpetually enjoined from making any conveyance of said premises, and the said Humphrey and Hurds & Smith from setting up or doing any act or thing claiming any title through such deed of said Chapman, and from prosecuting the said suit of ejectment or any other suit to recover possession of said premises thereby.

Nineteenth. That your orator may have such other and further relief in the premises as shall be just and equitable, and be awarded his costs in this behalf.

May it please the court to grant to your orator the writ of sub-
162 pœna of this court, under the seal thereof, commanding the said George P. Humphrey, Charles A. Hurd, Hiram D. Hurd, and David Smith, defendants, to appear in this court and to abide by and perform the decree of this court herein.

SANFORD BAKER,
By D. C. HOLBROOK,
His Sol'r and Counsel.

D. C. HOLBROOK,
Sol'r and Counsel for Comp't.

Filed in the clerk's office Oct. 11, 1875.

A. MANDELL, *Clk.*

163 *Answer of def't Humphrey.*

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, HIRAM D. HURD, Charles A. Hurd, and David Smith.

To the judges of the circuit court of the United States for the eastern district of Michigan, in equity:

The answer of the defendant George P. Humphrey to the complainant's amended bill.

This defendant, saving and reserving to himself all objections and exceptions to the amended bill of complainant filed herein, for answer thereto says:

1. He denies the facts stated in the first paragraph of said bill, and alleges that said defendant Charles A. Hurd is not now and never has been a citizen of the State of Michigan, and alleges that he is now and always has been a citizen of the State of New York.

2. He admits the facts as stated in the second paragraph of said bill.

3. He denies the facts stated in the third, fourth, fifth, seventh, eighth, ninth, tenth, and eleventh paragraphs of said bill, except so far as it is stated that Bela Chapman conveyed his interest in said premises to this defendant.

4. This defendant admits that he has commenced a suit in ejectment against said Hurds & Smith, in the circuit court for the county of Cheboygan, to recover the premises in question, and that the same is still pending; and he alleges that said suit was commenced about the first day of July, 1872, and the complainant in the suit assumed the defence thereof. That soon after the commencement of said suit said
164 complainant filed his bill in the circuit court for the county of Cheboygan, in chancery, against this defendant, praying the same relief which he prays for by said amended bill, and making said Bela Chapman a co-defendant. That this defendant answered said bill, and the same stood for hearing on bill and answer. That complainant, on filing said bill, procured an order for an injunction against this defendant to prevent him from prosecuting said ejectment suit. That afterwards, to wit, about the first day of July, 1873, said complainant voluntarily dismissed said bill, and in August following went to trial in said ejectment suit. That he then claimed to be in possession under a mortgage given by said Chapman, and not adversely to him, and that he could not be evicted until said mortgage was paid. That the circuit judge held his claim valid, and directed a judgment in his favor. That afterwards, to wit, on the tenth day of January, 1874, said judgment having been removed to the supreme court of this State was reversed, and a new trial ordered. That afterwards, to wit, in August, 1874, said complainant again went to trial in said ejectment suit and alleged as a defence thereto that Watts S. Humphrey's employment by Hurds & Smith, in connection with the purchase by them from said complainant and his subsequent connection with the defendant's purchase from said Chapman, rendered this defendant's title void as against said Hurds & Smith and said complainant. Said circuit judge so charged the jury, and a verdict and judgment was entered for said defendants Hurds & Smith, which judgment was afterwards removed by writ of error to the supreme court and reversed, on the ground that said Watts S. Hum-

phrey's conduct was in all things proper, and this defendant insists that by dismissing his bill in equity, filed as aforesaid in Cheboygan County, and proceeding to trial in said ejectment suit, said complainant has elected to have his rights and the right of this defendant, as
165 against said Hurds & Smith and against said complainant, determined at law. That the whole conduct of said Watts S. Humphrey has been fully investigated in said ejectment suit, and decided by the supreme court to be proper, and to in no way invalidate the defendant's title.

5. He admits that he is desirous of prosecuting his said ejectment suit to a final issue so that his rights may be determined at law, where alone his title is properly triable, and he denies that complainant or said Hurds & Smith have any rights or interest in his title.

6. He denies the facts as stated in the fourteenth paragraph of said amended bill.

7. And this defendant further answers that he purchased said premises in good faith from Bela Chapman, who was the lawful owner thereof, and that there is not now, and never has been, any privity of estate between this defendant and said Hurds & Smith, or between this defendant and said complainant. That neither said complainant or said Hurds & Smith have ever, either before or since his purchase, made any claim upon him or ever spoken to him in regard to said estate, except in so far as this suit and the defence in said ejectment suit are concerned.

8. And this defendant alleges that said complainant has, since the commencement of this suit, parted with all interest therein, and in the estate in question, and that he has now no interest whatever in said land, and is not in possession thereof.

9. This defendant insists that said complainant has not in, and has not in and by, his said bill made or stated such a case as entitles him to the relief prayed therein or to any relief, and he hopes to have the same benefit as if he had demurred thereto.

10. And the defendant denies all fraud, collusion, concealment or deceit, with which he is charged, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

GEO. P. HUMPHREY.

ATKINSON, HAWLEY & ATKINSON,
166 *Solicitors for Def'd't Humphrey.*

ASHLEY POND,
Of Counsel.

(Endorsed:)
Service accepted of a copy of the within.

D. C. HOLBROOK,
Sol'r for Compl't.

OCT. 19TH.
Filed Oct. 19, 1875.

A. MANDELL, *Clk.*

Replication.

The circuit court of the United States for the eastern district of Michigan. In equity.

The replication of Sanford Baker, complainant, to the answer of George P. Humphrey, impleaded with Charles A. Hurd and others, defendants.

This repliant, saving and reserving to himself now and at all times

hereaf'er all and all manner of benefit and advantage of exception which may be taken to the manifold insufficiencies of the said answer, for replication thereunto say' that he will aver, maintain and prove his amended bill of complaint to be true, certain and sufficient in the law to be answered unto; and that the said answer of said George P. Humphrey uncertain, untrue and insufficient to be replied unto by this repliant without this, that any other matter or thing whatever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain and prove as this honorable court shall direct, and humbly pray' as in and by his said bill he hath already prayed.

D. C. HOLBROOK,
Solicitor for Complainant.

Filed Oct. 27, 1875.

A. MANDELL, *Clk.*

167, 168 *Note of issue.*

In the circuit court of the United States for the eastern district of Michigan. In chancery.

SANFORD BAKER
vs.
GEORGE R. HUMPHREY ET AL.

This cause belongs to the 4th class, and is to be heard on , and is entitled to priority from the day of , A. D. 187 , that being the date at which . Please enter on the calendar for the next term accordingly.

Dated this 12th day of February, A. D. 1876.

ATKINSON, HAWLEY & ATKINSON,
Solicitor for Defendants.

To ADDISON MANDELL, Esq., *Clerk.*

Filed this 12th day of February, A. D. 1876.

JNO. GRAVES,
Dep'y Clerk.

169 *Deposition of Hiram D. Hurd.*

Circuit court of the United States for the eastern district of Michigan. In equity.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, CHARLES A. HURD, Hiram D. Hurd, and David Smith.

Deposition of HIRAM D. HURD, taken on behalf of the defendants in the above-entitled cause, February 1st, 1876, at the office of Atkinson & Atkinson, 100 Griswold street, Detroit, Mich., John Atkinson appearing for defendants, and D. C. Holbrook for plaintiff. Said witness being duly sworn, testified as follows:

Q. Where do you reside, Mr. Hurd?

A. At present in Buffalo, New York.
Q. Did you formerly reside at Cheboygan, Michigan?
A. Yes, sir.
Q. You are one of the defendants in this cause?
A. Yes, sir.
Q. Do you remember the occasion of your entering into a contract with the complainant, Sanford Baker, for the purchase of the land in question in this case?
A. Mr. Roblin acted as Mr. Baker's agent in the matter.
Q. Your contract was with Mr. Baker?
A. Yes, sir.
Q. When was that?
A. I think it was in the summer of 1872.
Q. Who acted for you, if any one, in making the purchase?
A. Mr. Humphrey.
Q. Which Mr. Humphrey?
A. Watts S. Humphrey, I believe his name is.
Q. When did you first speak to Mr. Humphrey about it?
A. Well, I can't say. It was some little time before the contract was drawn. I don't remember the number of days.
Q. What did you say to him?
A. I told him that we were contemplating buying a piece of
170 property of Mr. Baker, and would like to have him look up the title to it and draw the contract.
Q. In whose behalf did you ask him to do that?
A. On our own.
Q. Were you in any way acting for Mr. Baker or Mr. Roblin in employing him?
A. No, sir. Of course we wanted to have some one to protect our interest in the matter, and therefore we went to him, because he had been doing business for us.
Q. Did you afterwards have any conversation with Mr. Baker's agent as to having Mr. Humphrey draw the contract?
A. Yes, sir; I think I did. I think I told Mr. Roblin that I would speak to Mr. Humphrey and have him draw the contract.
Q. What did he say to that?
A. Well, if I recollect right, I think he didn't make any objection just at that time, but he said—I think he said—I don't know but it was the same time—that we might get Mr. Bell.
Q. What reply did you make to that?
A. I don't know, unless—I think I told him that I had already spoken to Mr. Humphrey about it, and I think he made the remark that it didn't make any material difference.
Q. Do you remember whether you said anything about Mr. Humphrey being your attorney, or doing your business?
A. I told him when I spoke to him first about having Mr. Humphrey—I told him that we were strangers there then, and as we were partially acquainted with Mr. Humphrey, I would naturally apply to him. He had been doing business before that for us—drawing up lumber contracts before that. He had done all our business before we went there; that is before we got established.
Q. What, if anything, did you say to Mr. Roblin (Mr. Baker's agent) about Humphrey being your attorney, or doing your business?
A. I think I told him at the time that Mr. Humphrey was doing our business, and I would go to him, and have him draw the contract.

Q. Do you know whether at that time he had been spoken to by Mr. Baker or his agent about it?

A. He didn't appear to when I spoke to him about it.

171 Q. Now, did you afterwards go to him with Mr. Roblin?

A. Yes, sir.

Q. For what purpose?

A. Well, I asked Mr. Roblin if he would come up with me and give Mr. Humphrey a description of the property so that he could draw the contract up; and he went up with me, and Mr. Humphrey took the description down.

Q. That was after you had spoken to him to draw the contract?

A. Yes, sir.

Q. In addition to drawing the contract did you employ him to do anything else?

A. Yes, sir.

Q. What else?

A. I employed him to procure an abstract of title.

Q. Did he do so?

A. He procured one. I don't know whether he got it off himself or not.

Q. He procured one?

A. Yes, sir.

Q. After procuring an abstract did he show it to you?

A. Yes, sir.

Q. And explained the state of the title?

A. Yes, sir; partially.

Q. Do you remember of talking with him about Bela Chapman?

A. Well, there was something said about it, not *not* a great deal at that time, although he told me that there appeared to be some old defect in the title.

Q. Of the Baker title you were talking about?

A. Yes, sir; we were talking about that.

Q. Did you have any talk about buying anybody else's title than Baker's?

A. No, sir; not then.

Q. You did afterwards?

A. Yes, sir; there was something said about it afterwards.

Q. What was said afterwards?

A. Well, he then told me that there appeared to be a flaw in some way. I don't whether he mentioned the name or not—any way through the records at Mackinaw, and he was inclined to think that the title that Baker had was not a perfect title and it might perhaps be bought in and got considerable cheaper.

Q. From whom?

A. Well, I think he mentioned during the conversation this Chapman.

Q. Bela Chapman?

A. Yes, sir.

Q. Well, what did you say to that?

A. Well, if I recollect right I told him that I didn't choose to have anything to do with that. It was such a doubtful case that I should

172 prefer not to have anything to do with it. I should prefer to take my title from Mr. Baker.

Q. Did you give him the reasons why you preferred to take your title from Mr. Baker?

A. Well, one of the causes was we was anxious to have the property

and we knew that Mr. Baker was responsible in case that he could not give us a good deed of it, and we preferred to take it in that way rather than to run the chances of losing it in some other way. We had not enough dock room at the mill, and we was obliged to have some dock below that we could ship lumber from.

Q. Did you refer at all to the examinations that Mr. Baker had had made or those premises through whom he purchased?

A. Well, I might have said that probably the title must be all right enough, or Mr. Baker would have found it out, or others who had owned it before him.

Q. Did you have any talk with Mr. Humphrey about his buying it?

A. I think I told him that he could as he chose about it. I didn't care to have anything to do with it. I had no idea that there was any flaw there that would amount to anything.

Q. That is you thought the Baker title was perfect notwithstanding what he told you?

A. Well, I didn't know but there might have been. I wa'n't acquainted with those matters. I hadn't never looked into them. I didn't feel competent myself to trace the title through.

Q. Well, did you take the Baker title, Mr. Hurd, in good faith expecting to maintain it and that it would be maintained as the better title?

A. I certainly did, because I thought there might be a shadow upon the other side and I thought Mr. Baker's title ought to be a pretty good title if he had owned it and had taken it from good business men before him and it had been traced along down. I thought it was more likely to be right than any other one.

173 Cross-examination:

Q. What interest have you in this suit?

A. In this suit?

Q. Yes, sir.

A. I suppose I am one of the defendants.

Q. What is your interest in that property?

A. I have a half interest.

Q. Do you mean personally?

A. Yes, sir.

Q. Who owns the other half?

A. My brother Charles.

Q. The other defendant?

A. Yes, sir.

Q. Have you made any conveyance of that property?

A. No, sir.

Q. Have you entered into any contract to convey it?

A. No, sir.

Q. Who is in possession of that property?

A. Mr. Humphrey.

Q. George?

A. No, I think it is Watts. I don't think Geo. has anything to do with it.

Q. Is he in possession of it by your consent?

A. Yes, sir.

Q. Did you give him a lease of it?

A. No; we have had some talk about the sale of it, but there has been nothing perfected.

Q. A sale to whom?

A. We occupied the property till navigation closed and then we vacated.

Q. You gave it up to Watts Humphrey?

A. No. I suppose he is virtually in possession, but the keys were delivered up to Macauley, but I suppose Macauley is acting for Mr. Humphrey. I have not been there myself since last August.

Q. What does he give you for the rent of it?

A. There has been no bargain made as to that.

Q. You say there has been some conversation about a sale of the property?

A. Yes, sir.

Q. Who were you to sell it to?

A. We was originally to Mr. Atkinson; that is the firm of Atkinson & Atkinson.

Q. What had Watts S. Humphrey to do with them?

A. I could not tell you. I never had any conversation with Mr. Humphrey about it in the world.

Q. You gave the keys to Mr. Macauley?

A. Mr. Macauley called for the keys, and my man that had
174 charge there, I had told him to deliver the keys to whoever called for them, and he told me after I came back from Buffalo that Mr. Macauley took the keys.

Q. Do you mean to say that Watts Humphrey is in possession there without your consent?

A. I never authorized him. I delivered, that is, I vacated the premises in favor of Mr. Atkinson.

Q. Had you entered into a contract with Mr. Atkinson?

A. We were about to, but there has been no contract made or signed

Q. But you intend to deliver possession to Atkinsons?

A. Well, I will if Mr. Atkinson fulfils his part of the contract.

Q. How many days before the contract with Mr. Baker was signed was it that you first spoke to Watts Humphrey about looking up the title?

A. Oh, it was quite a number of days. I don't remember exactly the number.

Q. 4 or 5 days?

A. It was all of that, I think, if I recollect right. I know it was several days after.

Q. Before the contract was signed you had an abstract, did you not?

A. Yes, sir.

Q. Did you show that abstract to Mr. Roblin?

A. Well, I can't remember whether I did or not.

Q. Did you talk with him about the title?

A. Yes, sir.

Q. What defect did you point out?

A. I don't know as I pointed out any. I think I said that the only flaw there was was a mortgage to Mears & Bates.

Q. That was understood all the time, that there was such a mortgage as that?

A. Yes, sir.

Q. Do you mean to say that you did not ask Mr. Roblin about the Chapman defect?

A. I don't think there was anything said about it.

Q. Now, sir, after you had advised with Watts Humphrey and had looked at that abstract and knew of that title being in Chapman, you signed that contract with all that knowledge, did you?

175 A. Yes, sir. Well, with the knowledge as far as I knew of it.

Q. Well, now can you state positively that you were informed that the title was actually in Chapman?

A. What is that?

Q. Can you state that you were informed that the title really was in Chapman?

A. No, sir; I was not so informed.

Q. Did you really know what the defect was?

A. No, sir; I did not.

Q. Whether you were twice sworn as a witness in the case of Geo. P. Humphrey vs. Charles A. Hurd, Hiram D. Hurd, and David Smith, in the circuit court for the county of Cheboygan?

A. I think I was twice.

Q. The question was put to you, "Did he inform you as to the title, or *or* what did he say upon the subject?" and did you not then answer, "He told me there was a mortgage in favor of Mears & Bates at that time, and he said to me that was a flaw in it, it appeared to him, previous to that, but he could not say positively until he had looked it up, and that it was nothing that would ever make any difference in the prof*f*it." Do you remember testifying to that?

A. Yes, sir.

Q. The question was put to you, "What did he mention as the flaw in the title?" and did you not answer, "I say I don't remember just what he said about it. I know that he spoke of there being a flaw in the record at Mackinaw." Do you remember that point?

A. I do.

Q. Was not the question put to you, "Did he inform you in whom that title appeared to be?" A. "No, sir; I don't think he did. He may have said, but I don't remember of his saying who the title was in." Do you remember of testifying to that?

A. Yes, sir.

Q. Was the question put to you, "Did you examine that abstract," and did you answer, "I looked at it." Do you remember that?

A. I think I answered so.

Q. Was the question put to you. "Did you discover the defect in the title from the abstract," and did you answer, "No, sir"?

A. I presume I did answer in that way.

Q. Who paid Humphrey for drawing that contract?

A. I could not tell you.

176 Q. You didn't pay him, did you?

A. I might have done so and I might not. I could not tell you. We had a running account. We would pay him money occasionally, and *and* we might have paid him, and still we would not say that we did, but I think that we did pay him, for drawing the abstract.

Q. Mr. Atkinson that you entered into the contract with is the same one that you consulted about the title?

A. I have not entered into any.

Q. You mean to say that you have not signed one, but that there is an understanding?

A. Yes, sir.

Q. (Second question above repeated.)

A. I don't remember of ever consulting Mr. Atkinson about the title.

Q. Was not the suit in which you were a witness in Cheboygan an action in ejectment brought to recover possession of this property?

A. I think it was.

Q. What attorney appeared to prosecute that suit for Geo. P. Humphrey?

A. W. S. Humphrey.

Q. Who else?

A. I believe Mr. Atkinson was there. I think he assisted him.

Q. Is not Mr. Atkinson who assisted Mr. Humphrey in that case one of the same to whom you delivered possession of the premises?

A. I believe so.

Redirect:

Q. Mr. Hurd, as I understand you, you employed Humphrey before you made your bargain with Mr. Roblin?

A. Yes, sir. That is, not before we had made the bargain, before we had completed the bargain.

Q. Before you had made your bargain you had some talk?

A. Yes, sir.

Q. Before you had agreed on any terms with Roblin you had already employed Humphrey to act for you in looking up the title?

A. Yes, sir; certainly before I had even got a description of it.

Q. This talk of the contract and sale between yourself and others that you have spoken of was before the hearing of this case in
177 the U. S. court, the last hearing, was it?

A. When was that hearing?

Q. Couple of months ago, after you went east.

A. Oh, yes.

Q. Before this amendment was allowed—this amended bill?

A. Last summer some time.

Q. About the time the foreclosure suit was commenced against you by Mr. Baker?

A. Yes, sir.

Q. It has never been completed or carried out?

A. No, sir.

Q. Mr. Hurd, have you ever asked Geo. P. Humphrey to convey to you?

A. No.

Q. Made any claim upon him?

A. No, sir.

Q. Do you now make any claim upon Geo. P. Humphrey?

A. I have not thought anything about it.

Q. Were you requested, after Mr. Geo. P. Humphrey commenced his ejectment suit, by Mr. Baker to insist upon Geo. P. Humphrey's title being transferred to you on the ground that you were entitled to it?

A. I don't remember of any such.

Q. Were you requested to commence a suit against Geo. P. Humphrey by Mr. Baker or his counsel, Mr. Holbrook?

A. I don't remember of being.

Q. Don't you recollect before this suit was commenced being requested by Mr. Holbrook to commence a suit in the name of your firm against Geo. P. Humphrey for this land?

A. I don't recollect.

Q. This ejectment suit that you speak of was brought by Geo. P Humphrey against your firm, was it not?

A. Yes, sir.

Q. Did Mr. Holbrook assume the defence of that?

A. Yes, sir.

Q. By whom did he defend it, by what counsel?

A. Mr. Holbrook was acting as counsel, I believe.

Q. You turned over the defence to him. You had no personal conduct of it yourself?

A. No, sir. It is so long ago that I don't remember much about the circumstances. I know that it didn't impress my mind any at the time.

178 The witness, on his attention being called to the interview with William A. Moore in the office of D. C. Holbrook, stated that he did remember of Mr. Holbrook asking him to file a bill claiming the benefit of the deed to George P. Humphrey. That witness replied that he did not want any litigation in the matter and declined.

It is hereby stipulated and agreed that the foregoing testimony may be read in the hearing of this cause.

D. C. HOLBROOK,
For Compl't.

Filed Feb'y 18, 1876.

A. MANDELL, *Clk.*

179, 180 STATE OF MICHIGAN:

In the U. S. circuit court for the eastern dist. of Michigan.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY.

DETROIT, *Feb. 24th*, 1876.

The above-entitled cause will be brought on for hearing at the next term of this court, notice having been served on the part of the complainant on Atkinson, Hawley & Atkinson, attorneys for the defendant, according to the statute and rules of this court. You will please place said cause on the issue docket of this court for said term.

D. C. HOLBROOK,
Sol'r for Complainant.

To the clerk of said court.

Filed Feb'y 24, 1876.

A. MANDELL, *Clk.*

181 *Deposition of Humphrey et al.*

In the circuit court for the eastern district of Michigan. In equity.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY ET AL.

WATTS S. HUMPHREY, a witness produced and sworn on the part of the defendants, says:

I was first spoken to about this land transaction by Hiram D. Hurd, in the Benton House, at Cheboygan, and I think on Sunday. He told me that he had some talk with Mr. Robbin about purchasing what he called the old mill property. He said that he wanted I should make an abstract of the title to the property and draw up the contract; but he did not want the contract drawn until the abstract was made. He said that

he would bring Mr. Robbins in and give me a description of the land and the terms they had agreed on, and then I could make some excuse for not drawing the contract at that time. This was the first conversation I had with any one about it. The first time I saw Mr. Robbins about it was the next day, or day after, when Hiram D. Hurd brought him into my office, and either Mr. Hurd stated the understanding and Mr. Robbins assented to it, or Mr. Robbins stated the understanding and Mr. Hurd assented to it, I don't know which; but it was for me to draw the contract. They were in my office perhaps five minutes, and there was little said about the matter, and that was the only time I saw Mr. Robbins until the day the contract was signed. I had no conversation with any one, except Mr. Robbins, that represented Baker.

Question by Mr. ATKINSON:

Q. At the time you drew the contract, for whom did you suppose you were drawing it?

(Objected to by Mr. Holbrook as incompetent.)

182 A. I drew the contract for Hurds & Smith, at their request.

WATTS S. HUMPHREY.

Subscribed and sworn to before me this 8th day of March, A. D. 1876.

J. S. KEENA,
Notary Public, Wayne Co., Mich.

The above may be read in the hearing of this cause.

D. C. HOLBROOK,
Sol'r for Compl't.

Filed in clerk's office March 9th, 1876.

A. MANDELL, *Clk.*

183 The circuit court of the United States for the eastern district of Michigan. In equity.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, CHARLES A. HURD, Hiram D. Hurd, and David Smith.

I hereby fix 22 days as a reasonable time for notice of taking testimony to be used in the above-entitled cause.

ADDISON MANDELL,
Master in Chancery and Examiner of said Court.

SIR: Please take notice that Watts S. Humphrey, Hiram D. Hurd, David Smith, and George P. Humphrey, who reside at Cheboygan, Michigan, and John Atkinson, who resides at Detroit, Michigan, will be examined before Addison Mandell, esq., an examiner of this court, on behalf of said defendant Humphrey, at the office of said examiner, in the city of Detroit, on Thursday, the 14th day of January, 1875, at 2 o'clock in the afternoon, at which time you are at liberty to appear and put such questions as to you may seem fit. You will also take notice that the foregoing is a copy of an order made by said examiner fixing the time for such notice.

Detroit, Nov. 20th, 1874.

Yours, &c.,

ATKINSON, HAWLEY & ATKINSON,
Sol'rs for said Defendant.

D. C. HOLBROOK, Esq.,
Compl't's Solicitor.

184 The circuit court of the United States for the eastern district of Michigan. In equity.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, CHARLES A. HURD, Hiram D. Hurd, and David Smith.

I hereby fix 22 days as a reasonable time for notice of taking testimony to be used in the above-entitled cause.

ADDISON MANDELL,
Master in Chancery and Examiner of said Court.

SIR: Please take notice that Watts S. Humphrey, Hiram D. Hurd, David Smith, and George P. Humphrey, who reside at Cheboygan, Michigan, and John Atkinson, who resides at Detroit, Michigan, will be examined before Addison Mandell, esq., an examiner of this court, on behalf of said defendant Humphrey, at the office of said examiner, in the city of Detroit, on Thursday, the 14th day of January, 1875, at 2 o'clock in the afternoon, at which time you are at liberty to appear and put such questions as to you may seem fit. You will also take notice that the foregoing is a copy of an order made by said examiner fixing the time for such notice.

Detroit, Nov. 20, 1874.

Yours, &c.,

ATKINSON, HAWLEY & ATKINSON,
Sol'rs for said Defendant.

D. C. HOLBROOK, Esq.,
Compl't's Sol'r.

185 STATE OF MICHIGAN,
County of Wayne:

Louis Griesinger, being duly sworn, says that he did, on the 22nd day of December, 1874, serve on D. C. Holbrook, esq., sol'r for the complainant in this cause, a copy of the order and notice as above, personally.

L. GRIESINGER.

Subscribed and sworn to before me this 22nd day of December, 1874.

ELMER G. B. SUTTON,
Notary Public, Oakland Co., Mich.

Circuit court of the United States for the eastern district of Michigan. In equity.

SANFORD BAKER, COMPLAINANT,
vs.
GEORGE P. HUMPHREY, CHARLES A. HURD, Hiram D. Hurd, and David Smith, defendants.

THURSDAY, *January 14th*, 1875.

Testimony taken on the part of defendant George P. Humphrey, under the 67th rule of practice for the courts of equity of the United States, and the notices hereunto annexed, by Addison Mandell, a master and examiner of said court, in equity.

Present, John Atkinson, esq., counsel for def't Humphrey; D. C. Holbrook, esq., counsel for complainant.

186 WATTS S. HUMPHREY, a witness produced, sworn, and examined in behalf of the defendant George P. Humphrey, testifies as follows:

I am thirty-one years of age; am an attorney at law, and reside at Cheboygan, Michigan; am a brother of defendant George P. Humphrey. I know the complainant and all of the defendants. I know the premises, the lands in question in this suit. Have known said premises for nearly six years last past. When I first knew them, and in the year 1869, said lands were unoccupied by any one; had no buildings of any kind or fences upon them. An adjoining lot on the south boundary-line of these premises was fenced for a short distance, but these premises were not enclosed and were common to every one. The next year after I came to Cheboygan, in 1870, there was a small shanty erected on the premises, used by Baker, Mears & Co., for their raftsmen engaged in rafting logs on the river. It was used that summer for that purpose some three or four months. Said premises were not used for any other purpose than as above until the time of the purchase of the premises, in the summer of 1872, by defendants Hurds & Smith, except temporarily, for banking cedar poles and posts for shipment. Defendants Hurds & Smith purchased said premises of complainant in June, 1872. Hurds & Smith employed me as their attorney to procure an abstract of the title to the premises and to draw the contract between Baker and them, and asked my advice as to the condition of the title. I advised them, after examination, that complainant's title to said premises was imperfect, and that the lands had been deeded to Bela Chapman by a perfect *claim* of title from the United States down to him; but there was no record of any deed from Bela Chapman to any one; that the only conveyance of said premises Mr. Chapman had executed to any one, as appeared by the records, was a mortgage on said premises to William Scott. I advised them (Hurds & Smith) to purchase the Chapman title; that I considered it the best title of the two. They said they wanted to take time to consider what they would do in the matter, and asked me if they purchased from Baker
187 and the title should prove worthless, whether they could collect back from him the purchase-money paid him for the land. I advised them they could, provided he conveyed to them by warrantee deed, with interest from the date of the payments to him. After considering the matter for two or three days they came to me and said they had concluded to purchase from Baker. I told them I considered the Chapman title good, and asked them if they would release me from my obligations as an attorney in the matter, as my brother, the defendant George P. Humphrey, contemplat*ing* purchasing the Chapman title, providing they did not. They told me that any one might purchase the Chapman title, as they did not want it. My brother did afterwards purchase the Chapman title to said lands, through me, as his agent. I never was employed by complainant, or any one in his behalf, in any matter involving the title to said premises, or in reference to the examination of the title, or giving any advice in regard to said premises in any matter whatever. I had no retainer from complainant nor employment of any kind whatever at the time of the purchase of said premises by Hurds & Smith from complainant, but was at the time employed by Hurds & Smith adversely to complainant in the matters referred to. After Hurds & Smith had elected to take the title from complainant they requested me to draw a contract to themselves. I drew the contract, and Mr. Baker's agent, George Robbin, and defendants Hurds & Smith came into my office, heard the contract read and signed it, and

I witnessed their signatures; said Robbin signing as the agent for complainant, and said defendants signing for themselves in my presence. Said Hurds & Smith took possession of said premises after their conversation with me about my brother's purchasing the Chapman title. At the time of said conversation said Hurds & Smith had not entered into their said contract with Baker, and so far as I know they had no relation with him except they were negotiating to purchase the premises in question. I asked Hurds & Smith to pay me for drawing the contract, but they told me it was for complainant to pay. They paid me for examining the title and for my advice in the matter. I afterwards rendered a bill to complainant for drawing said contract, which he
188 has never paid. When I asked Hurds & Smith if they would release me from all obligations to them as their attorney in regard to these lands, they said they released me from all obligations whatever in regard to said lands. I communicated that fact to my brother before he purchased, and after that I purchased the Chapman title to the premises in question for my brother. When my brother purchased from Chapman, Chapman claimed to me that he owned the premises. At the June term of the circuit court for the county of Cheboygan, I heard the complainant testify, as a witness in a case on trial, that he had deeded this property in question to said Hurds & Smith.

W. S. HUMPHREY.

Subscribed and sworn to before me this 14th day of January, A. D. 1875.

ADDISON MANDELL,
Master in Chancery, Cir't Court U. S., E. D. of M.

JOHN ATKINSON, a witness produced, sworn, and examined in behalf of defendant Humphrey, testified as follows, viz:

I am thirty-four years old, and reside in Detroit. I am an attorney at law, and one of the solicitors for defendant Humphrey in this case. I drew the deed for said defendant Humphrey, at Mackinac, and was present when he executed it. I heard Chapman say at that time that his title to the premises in question was perfect, or that he had never made any conveyance of it since his purchase of his premises. I had previously heard a conversation between Watts S. Humphrey, who has to-day testified in this cause, and the defendants Hurds & Smith, at Cheboygan, in which they said to him that they were willing that he should buy the Chapman title if he saw fit, as they had concluded to have nothing to do with it, and to trust to Baker's warranty. This latter conversation was before Hurds & Smith went into possession of the premises.

JOHN ATKINSON.

Subscribed and sworn to before me this 14th day of January, A. D. 1875.

ADDISON MANDELL,
Master in Chancery, Circuit Court U. S., E. D. of M.

189 GEORGE P. HUMPHREY, a witness produced, sworn, and examined on behalf of defendants, testified as follows:

I am one of the defendants in this suit, and reside at Cheboygan, Michigan, and now thirty-three years of age. In the month of June, 1872, I had a conversation with my brother, Watts S. Humphrey, in reference to the purchase of the premises in question from Bela Chapman. He showed me an abstract of the title and informed me he was

examining it for Hurds & Smith, and informed me that he did not wish me to purchase until he had seen Hurds & Smith, defendants. About four days afterwards my brother informed me that Hurds & Smith had elected to take the Baker title. I gave my brother some money to buy the Chapman title for me. He told me then said Hurds & Smith had released him and he could buy the lands for me as well as I could myself. My brother afterwards bought the land in question for me. Said Hurds & Smith have never made any claim upon me for the land, nor has the complainant, Baker. I have never had any conversation with them or either of them about the land. No money has ever been tendered me for the land by them or either of them or by any one for them. I have known the said lands ever since the spring of 1870. There was a shanty for hog drivers on the premises at that time or soon after, but the premises were otherwise unoccupied and unenclosed, and constituted a part of a large common.

GEORGE P. HUMPHREY.

Subscribed and sworn to before me this 14th day of January, A. D. 1875.

ADDISON MANDELL,
Master in Chancery Circuit Court U. S. Eastern Dist. of Mich.

The examination of the other witnesses named in the notice in this case is postponed until Jan'y 21st inst. at two o'clock p. m., and the examination adjourned until that time.

190 EASTERN DISTRICT OF MICHICAN, *ss:*

I, Addison Mandell, master & examiner, duly appointed by the circuit court of the United States for the eastern district of Michigan, in the sixth circuit, do hereby certify that on the 14th day of January, A. D. 1875, the day named in the deposition hereto annexed, I was attended at my office in the post-office building, in the city of Detroit, in said district, by the counsel and by witnesses aforesaid, to wit, Watts S. Humphrey, John Atkinson, and George P. Humphrey; that the said witnesses were duly sworn and examined, and their said depositions were reduced to writing and read to the witnesses respectively, and by them subscribed in my presence.

ADDISON MANDELL,
Master in Chancery Circuit Court U. S. Eastern Dist. of Mich.
Dated May 1st, 1875.

Filed March 15, 1876.

A. MANDELL, *Clk.*

191,192 In the circuit court of the United States for the eastern district of Michigan. In equity.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, HIRAM D. HURD, Charles A. Hurd, and David Smith.

At a session of said court held at the court-house in Detroit, Michigan, on the tenth day of April, 1876—present the honorable Halmer H. Emmons, judge of said court—the above cause came on to be heard at this term and was argued by counsel, and thereupon upon consideration

thereof it was ordered, adjudged, and decreed as follows, viz: That the bill of complaint filed therein be dismissed with costs.

H. H. EMMONS.

Filed and entered April 11, '76.

A. MANDELL, *Clk.*

193 In the circuit court of the United States for the eastern district of Michigan. In chancery.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, HIRAM D. HURD, Charles A. Hurd, and David Smith.

It is hereby stipulated and agreed that the abstract annexed of the conveyances referred to in the bill in this cause and proceedings relating thereto, and the copy of the contract annexed, may be read on the hearing of this cause with the same effect as the originals, the originals or certified copies thereof being subject to inspection if desired, being certified copies, being marked A, and signed by us under said mark.

ATKINSON, HAWLEY & ATKINSON,
Defendants' Solicitors.

194 Ex. A.

William Scott to Bela Chapman.

Warranty deed, dated February 27th, 1851, recorded March 8th, 1851.

Bela Chapman to William Scott.

Mortgage, dated February 27th, 1851, recorded March 5th, 1851.

William Scott to Jacob Sammons.

Assignment of above mortgage, dated November 29th, 1851, recorded March 19th, 1852.

Jacob Sammons and wife to William M. Belote.

Quitclaim deed, dated November 3rd, 1852, recorded November 26th, 1852.

William M. Belote and wife to Jeremiah W. Duncan.

Quitclaim deed, dated November 24th, 1853, recorded November 27th, 1854.

Jeremiah W. Duncan, by receiver of his estate, to John McArthur, Lucius Southwick, George W. Swan, and John F. McDonald.

Quitclaim deed, dated July 13th, 1865, and the enrolled decree and proceedings authorizing the same.

Lucius Southwick to William McArthur.

Quitclaim deed, dated September 28th, 1866.

195 John R. McArthur, William McArthur, and John F. McDonald to Sanford Baker, Robert Patterson, and Archibald C. Thompson.

Warranty deed, consideration $250, dated October 6th, 1866.

Archibald C. Thompson to Nathan Meare and Eli Bates.

Warranty deed, dated February 26th, 1868, recorded September 11th, 1875.

Robert Patterson to Nathan Mears, Eli Bates, and Sanford Baker.

Warranty deed, one-third, dated March 6th, 1868, recorded September 11th, 1875.

Nathan Mears and Eli Bates to Thompson Smith.

Warranty deed, dated February 23rd, 1870, recorded September 20th, 1875. Damages for loss of title to these premises, not to exceed $250.

Thompson Smith to Sanford Baker.

Warranty deed, dated February 25th, 1871, recorded June 17th, 1875.

196, 197 This contract made this seventh day of June, in the year of our Lord one thousand eight hundred and seventy-two, between Sanford Baker, of Belleville, county of Hastings, Dominion of Ontario, party of the first part, and Charles A. Hurd, Hiram D. Hurd, and David Smith, of Cheboygan County, Michigan, parties of the second part, witnesseth as follows:

First. The said party of the first part, in consideration of the sum of eight thousand (8,000) dollars to be paid to the said party of the first part, and of the covenants to be performed by the said parties of the second part, as hereinafter expressed, hereby agrees to sell to the parties of the second part all that certain tract of land situate in the village of Cheboygan, in the State of Michigan, known and designated as follows, to wit: The south part of lot three (3) of section twenty-nine (29), in town. thirty-eight (38) north, of range one (1) west said piece of land, being twenty-eight rods front on the west bank of Cheboygan River, and the same width on the west side of said lot, with the privileges and appurtenances thereunto belonging.

Second. The said parties of the second part, in consideration of the covenants herein contained on behalf of the said party of the first part, agreed to purchase of the said party of the first part the above-described land, and to pay for the same to the said party of the first part or his legal representatives the sum of eight thousand ($8,000) dollars, lawful money of the United States, in the manner following; that is to say: two thousand dollars August 1st, A. D. 1872; two thousand dollars, August 1st, A. D. 1873; two thousand dollars August 1st, A. D. 1874; and the balance, two thousand dollars, Aug. 1st, 1875, with interest to be computed from the date of these presents at and after at the
198 rate of 8 per centum per annum on the whole sum that shall be from time to time unpaid, and to be paid annually, both principal and interest to be paid at Cheboygan. And also that they will so long as any part of the principal or interest of the consideration money remains unpaid, well and faithfully, in due season in each and every year, pay or cause to be paid all taxes and assessments, ordinary or extraordinary, that may for any purpose whatever be levied or assessed on said premises or on this contract; and that they will not commit or suffer any other person to commit any waste or damage to said lands or appurtenances except for fire wood, or otherwise for his own use, or while cleaning of the land for cultivation in the ordinary manner.

Third. The said party of the first part further covenants and agrees

with the said parties of the second part that upon the faithful performance by the said parties of the second part of the covenants and agreements by them to be performed and upon the payment of the several sums of money above mentioned, and the interest thereon, at the times or in the manner and at the place above mentioned, to the said party of the first, that thereupon the said party of the first part will well and faithfully execute and deliver a good and sufficient deed or deeds, and thereby convey to the said parties of the second part, their heirs and assigns, a good and unencumbered title in fee simple to the above-described premises with their appurtenances.

Fourth. It is further mutually covenanted and agreed by and between the said parties hereto that the said parties of the second part may immediately enter on said lands and remain thereon, and cultivate the same as long as they shall fulfil and perform all the agree-
199 ments hereinbefore mentioned on their part to be fulfilled and performed, and no longer, and if they shall at any time hereafter violate or neglect to fulfill any of said agreements, they shall forfeit all right or claim under this contract and be liable to the said party of the first part for damages, and shall also be liable to be removed from the said land in the same manner as is provided by law for the removal of a tenant that holds over after the expiration of the time specified in his lease. And it shall be lawful for the said party of the first part, at any time after the violation or nonfulfillment of any of the said agreements on the part of the said parties of the second part, to sell and convey the said lands or any part thereof to any other person whomsoever, and the said party of the first part shall not be liable in any way or to any person to refund any part of the money which he may have received on this contract, nor for any damages on account of such sale. And it is hereby expressly understood and declared that time is and shall be deemed and taken as the very essence of this contract, and that unless the same shall be in all respects complied with by the said parties of the second part at the respective times and in the manner above limited and declared, that the said parties of the second part shall lose and be debarred from all right, remedies, or actions, either in law or equity, upon or under this contract.

Sixth. This contract is hereby declared to be binding on the respective representatives of the parties hereto.

In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

SANFORD BAKER, [L. S.]
By GEORGE ROBLIN. [L. S.]
CHARLES A. HURD. [L. S.]
HIRAM D. HURD. [L. S.]
DAVID SMITH. [L. S.]

Signed, sealed, and delivered in the presence of—
W. S. HUMPHREY.

199½ Filed May 4th, '76.

A. MANDELL, *Clk.*

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court room, in the city of Detroit, on Wednesday, the tenth day of May, in the year one thousand eight hundred and seventy-six.

Present, honorable Henry B. Brown, district judge.

SANFORD BAKER, COMPLAINANT,
vs.
GEORGE P. HUMPHREY, CHARLES A. HURD, Hiram D. Hurd, & David Smith, defendants. } 1631. In equity.

The motion of Mr. Holbrook, for complainant, to vacate the decree of dismissal of complainant's bill, now coming on to be heard, the hearing of the motion is continued until further order.

200, 201 In the circuit court of the United States for the eastern district of Michigan. In equity.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, HIRAM D. HURD, Charles A. Hurd, and David Smith.

This cause having been heard on pleadings and proofs at chambers, and a decree dated the 10th day of April, 1876, having been signed, dismissing the bill in this cause, and on request of the solicitor for the complainant at the time of such dismissal that the entry of said decree be postponed and take effect as of the 10th day of May, 1876, and the defendants' solicitor consenting thereto, and said decree having been prematurely entered on the eleventh day of April, it is ordered that the said decree be amended so that the hearing of said cause, the said decree, and the entry thereof take effect as of and from the tenth day of May, 1876.

H. H. EMMONS,
Ct Judge.

Entered and filed May 17, 1876.

A. MANDELL, *Clk.*

202 At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court room, in the city of Detroit, on Thursday, the first day of June, in the year one thousand eight hundred and seventy-six.

Present, honorable Henry B. Brown, district judge.

SANFORD BAKER, COMPLAINANT,
vs.
GEORGE P. HUMPHREY, HIRAM D. HURD, Charles A. Hurd, & David Smith, defendants. } 1631. In equity.

The complainant now comes as yet of the March term of this court, and during which term this cause was heard and the decree entered therein dismissing the complainant's bill, and claims and prays an appeal to the Supreme Court of the United States from the decree entered in this cause dismissing said bill therein, and prays that this be entered of record; and on motion of Mr. Holbrook, of counsel for complainant, it is ordered that said complainant give the usual bond on appeal in the sum of five hundred dollars, to be approved by a judge of this court.

203, 204 In the circuit court of the United States for the eastern district of Michigan. In equity.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, HIRAM D. HURD, Charles A. Hurd, and David Smith.

The complainant now comes, as yet of the March term of said court, and during which this cause was heard and the decree entered dismissing the bill therein, and claims and prays an appeal to the Supreme Court of the United States from the decree entered in this cause dismissing the bill therein, and prays that this be entered of record.

D. C. HOLBROOK,
Sol'r for Compl't.

JUNE 1, 1876.

Filed June 1st, 1876.

JNO. GRAVES,
Dep'y Clerk.

205 *Copy bond on appeal.*

Know all men by these presents that we, Sanford Baker of Belleville, Ontario, Dominion of Canada, as principal, and Eldridge G. Merrick and Dewitt C. Holbrook, of Detroit, Michigan, his sureties, are held and firmly bound unto George P. Humphrey, Hiram D. Hurd, Charles A. Hurd, and David Smith, in the full sum of five hundred dollars, to be paid to the George P. Humphrey, Hiram D. Hurd, Charles A. Hurd, and David Smith, their executors, administrators, and assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this 23d day of March, 1877.

Whereas, heretofore, on the tenth day of April, 1876, a decree was entered in the circuit court of the United States for the eastern district of Michigan, in equity, in a case wherein the said Sanford Baker was complainant and said obligors are defendants, dismissing the bill in said cause, and which decree was afterwards amended by an order of said court, by which the same took effect and was directed to be entered as of the tenth day of May, 1876; and whereas the said Sanford Baker has claimed, by filing and entering the same in the said court, an appeal from said decree to the Supreme Court of the United States, and the said appeal is now being prosecuted:

206 Now, the condition of the above obligation is such that if the said Sanford Baker shall prosecute his said appeal to effect, and answer all damages and costs if he shall fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(S'g'd) SANFORD BAKER. [L. S.]
(") D. C. HOLBROOK. [L. S.]
(") E. G. MERRICK. [L. S.]

Sealed and delivered in presence of—
(Sig'd) J. NEWELL PETTEF.

Approved by—
(Sig'd) H. B. BROWN,
Dist. Judge.

MARCH 23, 1877.

207 EASTERN DISTRICT OF MICHIGAN, *ss:*

I, Addison Mandell, clerk of the circuit court of the United States for the eastern district of Michigan, do hereby certify the above and foregoing to be true copies of the records, files, papers, and proceedings on file and of record in the case of Sanford Baker, complainant, against George P. Humphrey, Charles A. Hurd, Hiram D. Hurd, and David Smith, defendants, in said court, and of the bond on appeal therein filed; that I have compared the same with the originals thereof, of record and on file in my office, and the same are true copies thereof and of the whole thereof, being from pages 3 to 204, inclusive, of the foregoing transcript.

In witness whereof I have hereunto set my hand and the seal of said court, at Detroit, this twenty-ninth day of September, A. D. 1877.

[SEAL.] ADDISON MANDELL,
Clerk.

Clerk's fees: For transcript, $49.60; appealing bond, $50.60.

(Indorsement on cover:) No. 267. Sanford Baker, appellant, vs. George P. Humphrey, Hiram D. Hurd, Charles A. Hurd, and David Smith. E. Michigan C. U. U. S. Filed 11th October, 1877.

OFFICE
APP
D. W. MI

Supreme Court U. S.

No. 267.

SANFORD BAKER,
Appellant,

vs.

GEO. P. HUMPHREY et al.

PHILADELPHIA BAR ASSOCIATION

APPEAL FROM MICHIGAN.

BRIEF AND ABSTRACT.

THEODORE ROMEYN,
Counsel for Appellant.

DETROIT:
THE DETROIT FREE PRESS PRINTING HOUSE.
1880.

No. 267.

Supreme Court of the United States

SANFORD BAKER, *Appellant.* vs. GEORGE P. HUMPHREY, HIRAM D. HURD, CHARLES A. HURD, AND DAVID SMITH.	*Appeal from the Circuit Court of the United States for the Eastern District of Michigan —In Chancery.*

APPELLANT'S BRIEF.

The proceedings in this case have been so multifarious and complicated as to require a preliminary statement of them, in order to make the abstract of pleadings and proofs intelligible.

The general object of the bill is to have a deed of lands in Michigan, worth about eight thousand dollars, from one Bela Chapman to George P. Humphrey, adjudged to have been procured fraudulently as to the complainant, and to have the title conveyed by it decided to be held in trust for him or his assigns.

The complainant Baker, an alien residing in the province of Ontario, Canada, on the 6th of January, 1873, filed his bill in equity in the Circuit Court of the United States for the

Eastern District of Michigan, against the above named defendants, for the general object of having the ostensible legal title to certain premises, which had been vested in George P. Humphrey, one of the defendants, by or through Bela Chapman, declared to have been obtained fraudulently and for the use and benefit of the complainant, and that said Humphrey might be ordered and decreed to release the premises to the complainant.

The bill states as follows:

1. On the 27th of February, 1851, one William Scott was the owner, and for a long time prior thereto had been in possession, of a tract of land in Cheboygan county, Michigan, known as lot three, in the section therein particularly described.

Cheboygan county at this time was a part of the county of Mackinaw.

On the above day Scott, by warranty deed, conveyed the premises to Bela Chapman; which deed was duly recorded in Mackinaw county on the 8th of March, 1851.

2. Chapman, to secure the purchase price, mortgaged the premises to said Scott for thirty-five hundred dollars, which mortgage was recorded in Mackinaw county on the 5th of March, 1851.

3. Chapman never took possession of said premises, but Scott, and those claiming through and under him, have always been in the actual possession.

4. On the 29th of November, 1851, Scott assigned the said mortgage to Jacob Sammons, which assignment was duly recorded on the 19th of March, 1852.

Sammons afterwards conveyed the premises to William M. Belote.

5. The bill then sets forth the conveyances by Belote to various parties, through whom the title to the south half of said premises was conveyed to the complainant. These several conveyances were recorded either in Mackinaw county or in Cheboygan county, which for judicial purposes had been attached to Mackinaw, and are made a part of the bill.

The dates of these several conveyances are not given. The bill refers to the original registry of the different deeds, and asks that the same may be taken as part of the bill.

6. Complainant has never been able to discover that Chapman made any conveyance of said premises, other than by said mortgage to said Scott; but Chapman for years resided near the premises, never took possession thereof, knew that Scott and others were notoriously in adverse possession, claiming under the assignment of Scott to said Sammons of said mortgage and under the several deeds referred to; that Chapman never claimed any title to said premises, and that he, as attorney, drew warranty and quit-claim deeds of said premises, or portions of them, by parties claiming under Scott or his assigns, and witnessed the same, and as a notary public took acknowledgments of such deeds, giving no notice of any claim, if any he had, on said premises, and without claiming title to the premises.

The complainant claims title under some of these very conveyances.

7. Complainant claims that he was the legal and equitable owner of said premises and in the actual possession when he, by one George Roblin, as his agent, entered into a contract to convey to the defendants, the two Hurds and Smith, the said premises, and that, if Chapman had any legal or equitable title, it was barred by the statute of limitations.

8. On the 7th of June, 1872, the defendants Charles A.

Hurd, Hiram D. Hurd, and David Smith, applied to the complainant to purchase the premises; that complainant proposed to sell them for eight thousand dollars, that being what the premises were worth, which proposition they accepted; that the complainant employed one Watts S. Humphrey, of Cheboygan, an attorney-at-law, who for a long time had been complainant's attorney, to draw a contract of sale from him to said Hurds and Smith; that Humphrey drew such contract, in which the complainant agreed to give said Hurds and Smith a warranty deed; such contract was signed by said Roblin as complainants' attorney in fact, and by Hurds and Smith; that Watts S. Humphrey was a witness to it, and charged complainant for drawing the contract, which charges were allowed to him in the accounts between the complainant and said Humphrey; and Hurds and Smith took possession of the premises, and were in the actual possession of the premises when the bill was filed.

9. The original bill states that after they took possession they employed said Watts S. Humphrey to procure an abstract of title to said premises and to search the title and ascertain the situation and report the same to Hurds and Smith. Humphrey undertook said employment, and while engaged in it discovered that there was no deed of record from said Bela Chapman, and that the legal title by the record appeared to be in him; that he communicated this fact to John Atkinson, a lawyer residing in Detroit, and these two conceived the plan, not only of defeating the complainant's title and contract entered into with said Hurds and Smith, but also of defeating the purchase by said Hurds and Smith; and they proceeded to Mackinaw, where Chapman resided, represented to him that they wished to perfect the title in their clients, who, they pretended, had purchased said premises, and induced Chapman on the 10th of June, 1872, to give a quit-claim deed

of the whole of said lot three. The deed ran to George P. Humphrey, the defendant, who is a brother of Watts S. Humphrey the lawyer. Atkinson drew the deed, and Watts S. Humphrey, together with said Atkinson, conducted the whole of the business of procuring said deed. George P. Humphrey knew nothing of it at the time. Atkinson and Watts S. Humphrey paid Chapman twenty-five dollars, and when they applied to Chapman for the deed he informed them that he did not have and did not claim to have title to or interest in said premises.

10. Said Watts S. Humphrey and John Atkinson caused the deed to be recorded, and then commenced the suit in ejectment in favor of said Geo. P. Humphrey against Hurds and Smith, in the State Circuit Court for the county of Cheboygan, to recover the premises, which suit was pending undetermined when this bill was filed. Watts S. Humphrey was the attorney in this suit and John Atkinson acted as counsel.

11. George P. Humphrey now claims that by virtue of said deed from Chapman, he is the owner of the premises, and persists in prosecuting the suit.

Complainant applied to Hurds and Smith to institute proceedings to claim that said deed from Chapman to George P. Humphrey inured to their benefit. They refused to do this, or to take any action in law or equity in relation thereto.

12. Complainant tendered to (and again offers to pay) Humphrey whatever the deed from Chapman had cost, with all costs and expenses, which he refused; that complainant has made ineffectual efforts to procure a release from George P. Humphrey of his pretended right to said premises.

13. The bill prays as relief that the said deed from Chapman to Humphrey may be declared to have been obtained

fraudulently, and for the use and benefit of the complainant, and that the said George P. Humphrey be ordered to execute and deliver a release and quit-claim to the complainant of all the right, title and interest in and to said premises acquired by such deed, in such form and on such conditions as may be deemed equitable, and that he might be enjoined from making any conveyance of said premises, and that the said Humphrey, Hurds and Smith be enjoined from claiming any title through such deed from said Chapman, and from prosecuting the suit in ejectment or any other suit to recover possession of said premises thereby; and asks for general relief and for process of subpœna against George P. Humphrey, Charles A. Hurd, Hiram D. Hurd, and David Smith.

The defendant, George P. Humphrey, appeared, by Trowbridge and Atkinson as his solicitors, and answered, the said Atkinson being the John Atkinson mentioned in the bill. The defendants, Charles A. Hurd and Hiram D. Hurd, appeared, but did not answer the bill, and on the 13th of February, 1873, filed the following: "The clerk will please enter our appearance in this cause, and we do not require service of notice of any proceedings in this case, and no cost or expense to be adjudged against us in this case." And the defendant, David Smith, did not appear nor answer the bill; and the original bill was taken as confessed by all these defendants, with the exception of Humphrey.

This bill was filed in the Circuit Court of the United States on the 6th of January, 1873, and the facts alleged in it constitutes substantially the case of the complainant, though somewhat modified by an amended bill subsequently filed.

14. A replication was filed and testimony was taken, of which an abstract will be hereafter given.

George P. Humphrey's action in ejectment against Hurds and Smith was commenced in 1872, in the State Circuit.

It will be recollected that Chapman, who held a conveyance from Scott, gave back a mortgage for the purchase price. He seems never to have made a conveyance of the fee prior to that which he gave to George P. Humphrey, through the procurement of Watts S. Humphrey and John Atkinson.

The judge of the Eleventh Circuit in Michigan, in which Cheboygan county is situated, the Honorable Daniel Goodwin, formerly one of the judges of the Supreme Court of the State, as appears from the printed reports of the State, directed the jury to find a verdict for the defendants.

This judgment, the Supreme Court of the State reversed, upon the ground that the defendants must be presumed to have been in possession under the mortgage from Chapman to Scott, which had been assigned to the complainant's grantors, and that they did not hold adversely.

This case is reported in 29 Mich., at page 44.

The decision of the Supreme Court of the State in no way affects the questions involved in this proceeding.

It will be borne in mind that in this ejectment suit, only the legal title was in question, and the action was between George P. Humphrey and Hurds and Smith; that Baker, the complainant in the ejectment suit, was no party to it, and was not a party to the record.

The legal title, as it might appear to be invested in Hurds and Smith, was alone in controversy; and Hurds and Smith declined to take any part in asserting their equities as against George P. Humphrey, resting upon the asserted fraudulent conveyance to him, procured by Watts S. Humphrey and John Atkinson, the attorneys.

While this suit was pending, Mr. Baker, the present complainant, filed a bill in chancery, on the equity side of the

Cheboygan circuit court, against George P. Humphrey and Bela Chapman, which appears on the record at page 65. This bill was filed on the 20th of July, 1872, in the state circuit court.

Chapman demurred, and Humphrey answered; no injunction was ever obtained, and on the 6th day of January, 1873, complainant's solicitor dismissed the bill.

See page 69.

The filing of this bill had no effect upon the trial of the ejectment suit, and the bill was dismissed before the bill in the United States court was filed.

The ejectment case was tried in the state circuit court, and the jury under the instruction of the court, Judge Goodwin presiding, returned a verdict for the defendant.

From the judgment in this case, defendant took a writ of error to the Supreme Court of the state.

A report of this is to be found in *31 Mich., p. 436.*

In this case it was said: "The court refused the requests of the plaintiff that he was entitled to a verdict, and, on the contrary, submitted the case to the jury on the theory of the defense which, in substance, required them to find for the defendants."

The Supreme Court held that the evidence on the plaintiff's side, as stated in the bill of exceptions, was conclusive to show his right to recover.

Under the statutes of Michigan, the legal title alone is in issue in an action of ejectment, and the court said:

"Without stopping to inquire whether in an action of ejectment, which turns upon the legal title, it would be a good defense if admitted, that the deed from Chapman was obtained through a violation of duty Watts S. Humphrey owed to defendants, as a consequence of his position as their attorney, it is still too plain for argument that if there was

no violation of duty at all on the part of Watts S. Humphrey, his doings and the use made of his knowledge can afford no semblance of defense whatever; and looking at the case as the record shows it, I am unable to say that he derogated in the least in any legal duty he owed to the defendants," meaning Hurds and Smith.

It will be observed in this case that Baker was not a party, and the obligations of Hurds and Smith, and of George P. Humphrey to Baker, the present complainant, were not the subject of comment or decision; and the rights of Baker as against all these confederating parties, which form the substantial part of the present bill of complaint, were not referred to by the court; it was simply a decision that Hurds and Smith had no legal defense against George P. Humphrey in the action of ejectment brought by him against them.

The order of discontinuance in the chancery suit in the state circuit court was entered January 6th, 1873.

Mr. Baker then brought his action in the circuit court of the United States to assert his equities as against the various parties whose combination and confederacy had involved him in a liability on his agreements and covenants for eight thousand dollars, to be paid to Hurds and Smith, who, it is charged, were acting in combination with George P. Humphrey and Watts S, Humphrey, the result of which was that the title from Bela Chapman was procured for a nominal amount, and that was used as the pretext for a claim against him of eight thousand dollars for the failure of title to the same premises.

If his position was true, the fraud was of the grossest character; and we are led now to where we can make an intelligible abstract of the pleadings and proofs and of the issues presented.

ABSTRACT OF PLEADINGS AND PROOFS.

Abstract of Original Bill. This has been already given.

Abstract of Answer of George P. Humphrey to Original Bill:

1. He admits William Scott's ownership and his conveyance to Bela Chapman, as stated.

2. He admits the execution of the mortgage of Bela Chapman, but denies that it was to secure the purchase price of the premises.

3. He denies that Chapman never took possession, and denies that Scott and those claiming through and under him took possession and have been in possession, claiming under Scott; and insists that if Scott remained in possession after giving the deed to Chapman, he is estopped from claiming the premises adversely to Chapman.

4. He denies that complainant has ever been the legal and equitable owner of said premises, and denies that Chapman's title is barred.

5. He admits the making of the contract between the complainant and the other defendants; but denies that complainant employed Watts S. Humphrey to draw the contract, or that Humphrey was then or had been the attorney of complainant; and avers that Humphrey was employed by Hurds and Smith to draw the contract, and was presented by Hurds and Smith with an abstract furnished them by the complainant, to get the description of the premises.

6. He states that the compainant's agent directed Humphrey to charge the complainant for services in drawing the contract; and denies that the complainant ever paid it.

7. He admits that Chapman conveyed the premises to the defendant, but claims that he did so for a valuable consideration; that he bought the same from Chapman in good faith, and believing him to be the legal and equitable owner of said premises. He admits that at the moment when the deed was taken he had no knowledge thereof, but alleges that Watts S. Humphrey had full authority for him. He admits the deed was drawn by Atkinson, but denies that Chapman informed them that he had no title. He avers that he, Chapman, claimed to be the owner of said premises under said deed from Scott. Denies that the price paid said Chapman by said Watts S. Humphrey was paid as the attorney or agent of this defendant. He admits that he claims to own the premises under the deed from Chapman; but denies that the complainants Hurds and Smith have any right in law or equity under the deed.

He admits that he has refused, and still refuses, to convey the premises to the complainant; and submits that the complainant has not made such a case as entitles him to relief in equity

A replication was filed, and proofs were taken.

On the 12th day of February, 1875, certain witnesses testified on behalf of the defendants. Newton, Horn, Metivier, Stephenson and McArthur testified as to the possession of the property until its purchase by Hurds and Smith.

An abstract of their testimony is not given, for the reason that it has no application to the points involved in this hearing upon the appeal.

It appears by the evidence that Bela Chapman, after the conveyance from Scott to him, neither claimed to own nor took possession of the premises in his own right; that in fact he occupied a portion of them for a short time, and actually paid rent.

While there is a conflict of testimony as to the continuance and extent of the possession by Scott and his assignees, all the witnesses concur in stating that so far as the premises were actually occupied, they were not occupied by Chapman, but were occupied by Scott and his assigns.

If the case made by the bill presented the question, it could, we think, be successfully maintained under the facts, and in view of the conduct of Chapman as to possession and as to drawing and witnessing deeds of a portion of these premises, and setting up no claim of title, and his finally giving his quit-claim to Humphrey for the nominal consideration of twenty-five dollars, that a grant from him to Scott or his assigns would be presumed. But the case presented by the pleadings and the issues do not embrace this consideration.

David Smith (page 58), one of the defendants, testified that he, with the defendants Hurd, as the firm of Hurds & Smith, purchased the land from complainant some time in the month of June, 1872; that before they made the purchase they employed Watts S. Humphrey to examine the title for them; that Humphrey made an abstract of the title and stated to them that there was a missing link in the title to Sanford Baker, and that the title appeared to be in Bela Chapman. This was two or three months (days it should be) previous to the signing of the contract of purchase from Baker. Two or three days after Watts S. Humphrey pointed out the defect in the title the witness signed the contract of purchase of the land from the complainant. Before signing this contract of purchase the witness and the defendant Hiram D. Hurd went to Watts S. Humphrey's office and notified him that they elected to take the Baker title, and told him to draw the contract for the purchase of the same. About two weeks after purchasing they took possession of the property. Immediately after signing the contract for

purchase this witness, David Smith, and the defendant Hiram D. Hurd, went to Detroit. During the negotiation Charles A. Hurd was in the city of Buffalo. About one week after this both the defendants Hurd and the witness returned to Cheboygan. While in Detroit the witness learned that George P. Humphrey had purchased the Chapman title to the land in question. Before electing to take the Baker title, he asked Watts S. Humphrey "if the Chapman title should prove good, if we could collect from Baker what we paid him?" Watts S. Humphrey informed him "that we could recover our purchase money and interest." Baker deeded by warranty deed, and his title failed. "We then elected to take the Baker title." Witness has no remaining interest in the land, having sold the same.

Various affidavits were made for extending the time for taking testimony, and nine witnesses were examined for the complainant and seven witnesses for the defendant, the index to whose testimony will be found on page 31 of the printed case.

The substantial issue in this equity case is, whether the purchase from Bela Chapman by Watts S. Humphrey, acting in connection with John Atkinson, and taking the deed to his brother George P. Humphrey, was under the circumstances fraudulent.

The relations between these various parties, and the duties and obligations of Watts S. Humphrey, George P. Humphrey, Charles A. Hurd, Hiram D. Hurd, and David Smith, to the complainant Sanford Baker, and their conduct after having learned the position of Bela Chapman and his conveyance to George P. Humphrey, and keeping the same secret from Baker, and then leading him to give Hurds and Smith a warranty deed, with the obvious intention of collecting the purchase money from him under the covenants in the deed,

are the principal matters in regard to which this testimony should be examined.

The question of adverse possession is not involved in this suit in equity, and hence no abstract need be given of the testimony of the witnessess so far as that point is concerned.

John V. Vincent—page 32—testifies that Bela Chapman in 1852 disclaimed having any interest or ownership in the property, and stated that it belonged to Sammons, and he had only taken the deed from Scott to shield Sammons, and that he never took possession of the property.

Watts S. Humphrey—page 34—testifies that he was a practicing attorney; that he drew the contract from Baker to Hurds and Smith, and rendered an account to Mr. Baker containing a charge for making that contract; that charge appears in Exhibit "A," on page 64. Although he afterwards says the account was not paid, it appears that he was in other matters indebted to Mr. Baker, or to the firms with which Mr. Baker was connected, so that in reality he is indebted to Mr. Baker after giving him credit for the charge for making the account.

He further says: "I procured an abstract of the title to that property and made an examination of it. I then discovered that the title was not perfect in Mr. Baker, that he had no title, as appeared from the records. *This was some two or three days before I drew the contract.* Mr. Roblin conducted the sale of the property for Mr. Baker, so far as I knew. I did not state to Mr. Roblin that the abstract was defective in this point, nor in any other."

His employment by Mr. Roblin and his concealment of the fact of this defect in the title thus appear, and need no comment to evince his position and the character of his proceedings.

In his cross-examination he says: "I had no employment from Mr. Baker, but adversely to him, and by Hurds and Smith, with express instructions from them to say nothing about the abstract of the property to him. I am the same party who purchased the property for defendant George P. Humphrey."

Here, then, is evidence of combination and confederacy between Hurds and Smith and Watts S. Humphrey. He was employed to draw this contract; he discovers the defect in the title, conceals it from Mr. Roblin; and Hurds and Smith instruct him to keep it secret; the title is secured to his brother; and then they all unite in getting Mr. Baker to contract to sell the property by warranty deed, with the obvious, and in fact announced, view of making him liable upon the covenants; and that the further object in view, on the part of Hurds and Smith, as appears by their subsequent conduct, was to get the Chapman title for much less than the price put upon the property by Mr. Baker, and less than its actual value, and then collect from Baker, the victim of these combinations, the full amount covered by the covenants.

Their co-operation is demonstrated by the testimony: They get the title from this man Chapman, who it is pretended claimed to own it, and yet sold for twenty-five dollars the property for one half of which they were willing to pay eight thousand dollars to Baker; and the agent in carrying out these schemes, for his own benefit and the benefit of his brother and of Hurds and Smith, was Watts S. Humphrey, whom Baker had employed to draw the contract, and on whom he had a right to rely for a disclosure of matters connected with his interests in these negotiations, in portions of which he certainly occupied the position of legal relations with Mr. Baker, and came under professional obligations.

Let us look at this transaction in the light of this witness' own statement. He states that they said "they would take time to consider what they would do, and they did take one or two days to think it over in. Then they came to me and wanted to know if they should purchase from Baker and then pay money to him, whether they could get the money from him again or not. I advised them that they could. If he deeded by warranty deed and his title failed they could recover under the covenants of warranty the money paid, with seven per cent interest. They then elected to take the Baker title, and instructed me to draw up the contract. They said they would bring Mr. Roblin the next morning and have the contract signed."

Here note that Mr. Roblin was Mr. Baker's agent, and that these confederates carefully concealed from him what they had discovered in regard to the defect in the title, led him on to make the contract, secured the Chapman title to George P. Humphrey, the brother of Watts S. Humphrey, the main manager in this business; afterwards had an understanding to buy from George P. Humphrey and John Atkinson for a much less sum, and involved Baker in the liability expressed by his contract and covenants.

The witness further says, as to his charges for drawing the contract, "I demanded the pay for it from Hurds and Smith, but they said it belonged to Mr. Baker to pay, and to charge to him; Hurds and Smith paid me for the balance of the services." And it appears, as above stated, that the charge for drawing this contract was made by Watts S. Humphrey against Mr. Baker.

Thus much for Mr. Watts S. Humphrey's testimony, when sworn for the complainant.

He was afterwards examined as a witness for his brother, George P. Humphrey, the nominal purchaser in this case.

He says: "Q. When you bought the premises in question, did you suppose Bela Chapman to be the *bona fide* owner thereof?

A. I did; he informed me that he was, and I believed him.

Q. Did you, at that time, know anything of his having drawn deeds of adverse claimants to others?

A. I didn't."

The half of this property was of such value that Hurds and Smith were willing to pay and agreed to pay Mr. Baker eight thousand dollars for it; yet Mr. Chapman, who lived in the immediate vicinity, and had lived, as appears from the testimony, at Cheboygan, and upon this very property, and who is represented to be the *bona fide* owner of this property, is still willing to sell it, and is represented as actually selling, not merely the south half, but the entire property, for $25; and this is called a purchase and sale in good faith.

In his cross-examination, p. 36, he says that Mr. Baker was not present during the negotiations, and all his conversations were with Mr. Roblin.

And he further says that his conversation "in regard to this matter was with Hiram D. Hurd and David Smith."

We have already seen what Mr. Smith's testimony was.

The testimony of the witness *Charles Brannock*, pp. 36–40, and of Francis M. Sammons, pp. 40–51, is not deemed material upon this subject, beyond the statement of the latter that, in 1852, he collected from Chapman rent for the occupation of these premises by the latter as a tenant. (See fol. ~~Vol.~~ 112.)

The testimony of *George P. Humphrey*, one of the defendants, p. 51, states that he was a brother of Watts S. Humphrey, and the person to whom Chapman deeded the

premises; that Watts S. Humphrey has asked him (witness) to make an abstract of that piece of land for Hurds and Smith; that Watts told him he did not care for having Mr. Baker's attorney make the abstract, and he (Watts) procured it to be done; that he (Watts) found from the abstract that there was no deed from Chapman to Baker; that Hiram D. Hurd joined them, and his brother (Watts) told Hurd of the defect in the title, and they went to the office to look it over, they were going to wait till Thursday or Friday morning to consider whether they would take the Baker or Chapman title; and on Friday Watts told him that Hurds and Smith had concluded to take the Baker title, and that it released him, and that he (the witness) could take the Chapman title if he wanted to.

The next thing he heard was that Watts had got the land and taken the deed in his (witness') name, paying $25 for it, which money witness advanced; that he (Watts) being a lawyer, would carry on the lawsuit, and if witness won, he (witness) was to do what was right.

The witness, Metivier, p. 52, testified to Chapman's drawing deeds conveying this property and taking the acknowledgment of them as a notary, claiming nothing himself in the premises.

George Roblin, p. 54, was the agent of Mr. Baker, and testified that he signed the contract with Hurds and Smith for Mr. Baker, and they entered into possession of the property under that contract in June, 1872; that Watts S. Humphrey drew that contract for Mr. Baker on the witness' request; that he had drawn other contracts, as the attorney of Mr. Baker, to other parties, and he rendered Mr. Baker an account containing a charge for drawing this contract; that the witness, who represented Mr. Baker, who lived in Canada, was not advised of the claim of Chapman until the

Hurds had taken possession; that when we went to sign the contract he (witness) made an inquiry of Mr. Humphrey how he found the title, and asked him if he found the title all right, and Mr. Humphrey (*Watts S. Humphrey*) *told him that he found the title all right*, excepting a mortgage given by Thompson Smith to Meare & Bates; the existence of this mortgage has no connection with this controversy; that Hiram D. Hurd was present at the time the inquiry was made, and it was not till after the deed was made by Chapman to George P. Humphrey that he (witness) knew of the defect.

Thus far the testimony shows that there was a positive misrepresentation as to the title made by Mr. Watts S. Humphrey, who had been employed by Mr. Baker, and that Mr. Hurd was present at the time when this misstatement was made.

The witness further testifies as to the tender of the money which had been paid to Chapman, and other expenses.

On his cross-examination he states that he heard Mr. Hurd ask Humphrey to look into the title at the time when the parties went up to have the contract drawn.

Of course he had a right to suppose that Mr. Humphrey was acting for all the parties.

He further says that "in buying the property Mr. Hurd was acting for himself; I was acting for Mr. Baker." He further states that Baker, in accordance with the terms of the contract, on the 24th day of October, 1872, deeded the property to Hurds & Smith, and that Baker was defending the ejectment suit commenced against the Hurds by George P. Humphrey, but he could not say whether it was at Hurds' request or not.

Watts S. Humphrey was sworn for the defendant (page 56). He denies that Roblin employed him to draw the contract. He states that he had not at that time any general or other employment from Mr. Baker. He speaks of his professional relations with Mr. Baker. He admits that Hurd asked him to make an abstract and examine the title; says, "he expressly told me to keep it to myself and not let Roblin know;" and he further says that as soon as he examined the abstract "I notified Hurds & Smith and showed them the abstract, and told them that Sanford Baker had no title."

Mr. Baker, the complainant, was examined for the defendant (page 59). He states that he acted only through Mr. Roblin; that he did not personally employ Mr. Watts S. Humphrey, but that "he was doing all my business at that time; he was the lawyer doing our busines—or my business."

He testifies, in regard to bringing the suit in chancery in the state court, that he saw his counsel, Mr. Holbrook, at Lansing—the capital of the State of Michigan—in the evening, as late as seven o'clock, and that he left there about nine o'clock the next morning, and the bill was drawn during that interval. That he was in Mr. Holbrook's office at one time with Hiram D. Hurd and David Smith; that Mr. Holbrook asked them to file a bill claiming the benefit of the deed from Chapman to George P. Humphrey. They said they did not want to do it, and they were not in a situation to do it; they said their situation in business was such that they did not want to go into litigation, and their possession was good as it was. Mr. Holbrook then informed them that he would be compelled to file a bill; and they were then informed that they would be made parties to the suit. He afterwards says, "they would not file the bill themselves, but they were willing that I should." He says, as regards the Humphrey

title, "if he procured it, he intended it for their protection; I asked them to file the bill because they were holding the property and had possession of it. They did not tell me that they had consented to Humphrey's purchase, and could not file a bill. They did not tell me they had spoken to Humphrey about it before he purchased. I didn't know there was any understanding between them and Humphrey at the time in regard to the Chapman title. I had no understanding with them, or either of them, only the contract for the sale, and the deed and mortgage."

On page 61 he says that he said he had been told there was a mortgage from Sammons to Dousman that might come against it; and subsequently says, "I never knew, until after the sale to the defendants, Hurds & Smith, of any defect except the mortgage, and if I had, I would not have allowed it to be sold."

John Atkinson, sworn for defendant, says, "I was present with Watts S. Humphrey when he purchased the land in question of Bela Chapman. I had before that time heard him state to Hiram D. Hurd that Bela Chapman appeared, by an abstract that he then had, to be the owner of the land now in dispute. I had also before that time heard said Hurd tell said Humphrey that they—Hurds & Smith—had concluded to buy from Baker and trust to his covenants, and that said Humphrey might, if he saw fit, buy the land in question, as they would have nothing to do with the Chapman title. At the time of the purchase from Chapman he said he was the legal owner of the land, having received the deed of Scott—which appears of record—and never conveyed it to any person."

It will be remembered that this witness became interested in the Chapman title, which was procured by a quit-claim deed, and for the nominal sum of twenty-five dollars.

There are various exhibits in the case (pages 64–5) showing the accounts between Watts S. Humphrey and Sanford Baker, and persons in company with Mr. Baker and with George Roblin.

The bill in chancery filed in the Circuit Court, and which was discontinued before the bill was filed in the United States Court, is set forth at length, having been dismissed before there was any decree in it, it is not necessary to make any abstract of it.

On the 29th day of September, 1875, Mr. Baker's case came on for hearing on pleadings and proofs in the United States Circuit Court; the court denied the motion of complainant for leave to amend his bill, heard the case in part, and continued it for further hearing (p. 71). On the 5th day of October the cause was further heard, and leave to amend the bill was granted, upon terms which were complied with.

An amended bill was then filed. This is set forth on page 72 of the record.

In regard to this, the first eight paragraphs of the amended bill are substantially like the original bill. The eleventh to the nineteenth paragraphs, inclusive, are identical, except that the amended bill, in the eleventh and twelfth paragraphs omits the name of John Atkinson.

The amended bill differs from the original bill in the ninth and tenth paragraphs. In the original bill (page 3) the charge in the ninth paragraph is that the plaintiff employed Watts S. Humphrey, an attorney at law, who a long time before had been the attorney of complainant, to draw a contract of sale of the premises to Hurds and Smith; that Humphrey did draw such contract, by which the complainant agreed to execute and deliver to them a warranty deed of the premises, and that the same was signed by the agent of the complainant and by said Hurds and Smith, and was witnessed

by said Humphrey, and that the complainant afterwards paid Humphrey his charges for drawing the contract; and thereupon Hurds and Smith entered into the actual possession of the premises and still were in actual possession.

The tenth paragraph states that after Hurds and Smith entered into possession, they employed Humphrey as an attorney, to search the title and procure an abstract and report the same to them; that Humphrey undertook the employment and discovered that there was no deed of record from Bela Chapman, and the legal title appeared to be in him; that he communicated this information to John Atkinson; that they—the two lawyers—conceived the plan of not only defeating the complainant's title and the contract with Hurds and Smith, but also of defeating the purchase made by Hurds and Smith, who were the clients of said Humphrey, and that they proceeded to Mackinaw, where Chapman lived, and representing to him that they wished to procure the title in their clients to the purchase of said premises, induced him to give a quit-claim to George P. Humphrey, the brother of Watts.

The amended bill (page 72) states in section nine the agreement of purchase between Hurds and Smith and complainant, specifying the dates of payment, that complainant believed that he was the sole owner of the premises and had good title to them; that on or about the 3d of June, 1872, he employed Watts S. Humphrey, who had been his attorney, to draw the contract, and Humphrey did draw such contract, dated on the 7th of June, 1872. It states the terms of the contract signed by Hurds and Smith and by the complainant through his agent, and witnessed by Humphrey; that Hurds and Smith took possession of the premises on the day of the signing of the contract, and that Humphrey some time afterwards sent in his bill to Baker for drawing the contract.

The tenth paragraph of the amended bill states that after Humphrey was so employed to draw the contract, and before the same was signed, he and his brother George, and the said Hurds and Smith, all of the defendants, ascertained the title so far as the record showed it to be in Bela Chapman; that he appeared to be the true owner of it, and the same was the subject of conversation between all of them. That the liability of complainant to Hurds and Smith, if he signed the contract, and the validity of the title of Chapman, were discussed. That the fact of the title appearing to be in Chapman, and the complainant's title defective, was intentionally concealed from the complainant by Watts S. Humphrey and all of the defendants, and complainant knew nothing about it until after signing the contract. That Watts S. Humphrey and the defendants knew that Chapman resided but a short distance from Cheboygan, and they conceived the plan of secretly acquiring the title of Chapman to the premises, and thereby defeating the complainant's title, and accordingly Watts S. Humphrey, on the 10th of June, 1872, procured a quit-claim from Chapman to his brother George, for the small sum of twenty-five dollars.

George P. Humphrey, who alone had answered the original bill, answered this amended bill. (Page 76.)

He admits the pendency of the suit in ejectment against Hurds and Smith; avers that the complainant assumed the defense in the suit; that the complainant soon afterwards filed his bill in the State Circuit Court of Cheboygan county, praying the same relief which he prays for in this case; that the defendant answered the bill, and the same stood for hearing on bill and answer; that he procured an order for an injunction against the defendant, to prevent him from prosecuting said ejectment suit, and that afterwards, on the first day of July, 1873, he voluntarily dismissed the bill, and in August following went to the trial of the ejectment suit.

It then sets forth the proceedings in that ejectment suit, and in the subsequent suit in ejectment, which are sufficiently explained by the report of the cases in the 29th and 31st volumes of the Michigan reports, before cited.

It avers the purchase of the premises in good faith; the purchase from Bela Chapman, "who was the legal owner thereof;" denies that there was any privity of estate between him and Hurds and Smith, or between him and the complainant.

A replication was put in and some testimony was taken.

Hiram D. Hurd was examined for the defendants, p. 78. His testimony tends to show that the action of Watts S. Humphrey, as he understands it, was a fraud upon Hurds and Smith.

It is not denied but that whatever might be the relations of this person to Baker, he certainly occupied the position of counsel and adviser for Hurds and Smith.

Mr. Hurd states that Mr. Watts S. Humphrey acted for him in making the contract with Baker's agent; that he told Humphrey he would like to have him look up the title to it and draw the contract; "we wanted some one to protect our interest in the matter, and therefore we went to him because he had been doing business for us; I think I told Mr. Roblin that I would speak to Mr. Humphrey and have him draw the contract; he said that he 'might get Mr. Bell,' and I told him that I had already spoken to Mr. Humphrey about it, and I think he made the remark that it did not make any material difference; I asked Mr. Roblin if he would come up with me and give Mr. Humphrey a description of the property, so that he could draw the contract up, and he went up with me, and Mr. Humphrey took the description; I employed him to procure an abstract of title." He procured one and showed it to the witness.

He further testifies:

Q. And explained the state of the title?

A. Yes, sir, partially.

Q. Do you remember of talking with him about Bela Chapman?

A. Well, there was something said about it, not a great deal at that time, although he told me that there appeared to be some old defect in the title.

Q. Of the Baker title you were talking about?

A. Yes, sir, we were talking about that.

Q. Did you have any talk about buying anybody else's title than Baker's?

A. No, sir, not then.

Q. Did you afterwards?

A. Yes, sir, there was something said about it afterwards.

Q. What was said about it afterwards?

A. Well, he then told me there appeared to be a flaw in some way; I don't remember whether he mentioned the name or not—anyway, through the records at Mackinaw, and he was inclined to think that the title that Baker had was not a perfect title, and it might perhaps be bought in considerably cheaper.

Q. From whom?

A. Well, I think he mentioned during this conversation, this Chapman.

Q. Bela Chapman?

A. Yes, sir.

Q. Well, what did you say to that?

A. Well, if I recollect right, I told him that I didn't choose to have anything to do with that; it was such a doubtful case that I should prefer not to have anything to do with it; I should prefer to take my title from Mr. Baker.

Q. Did you give him the reasons why you preferred to take your title from Mr. Baker?

A. Well, one of the causes was, we were anxious to have the property and we knew Mr. Baker was responsible in case that he could not give us a good deed of it, and we preferred to take it in that way rather than to run the chances of losing it in some other way. We had not enough dock room at the mill, and we were obliged to have some dock below that we could ship lumber from.

Q. Did you refer at all to the examinations that Mr. Baker had had made of those premises or through whom he purchased?

A. Well, I might have said that probably the title must be all right enough or Mr. Baker would have found it out, or others who had owned it before him.

Q. Did you have any talk with Mr. Humphrey about his buying it?

A. I think I told him that he could do as he chose about it; I didn't care to have anything to do with it; I had no idea that there was any flaw there that would amount to anything.

Q. That is, you thought the Baker title was perfect, notwithstanding what he told you?

A. Well, I didn't know but there might have been; I wasn't acquainted with those matters; I had never looked into them; I didn't feel competent myself to trace the title through.

Q. Well, did you take the Baker title, Mr. Hurd, in good faith, expecting to maintain it, and that it would be maintained as the better title?

A. I certainly did, because I thought there might be a shadow upon the other side, and I thought Mr. Baker's title ought to be a pretty good title if he had owned it and had taken it from good business men before him, and it had been traced along down. I thought it was more likely to be right than any other one.

On cross-examination the witness stated that he owned a half interest in the property and his brother Charles owned the other half; that he had made no conveyance of the property nor made a contract to convey it; that Watts S. Humphrey was in possession of the property; that he was in possession by the witness's consent; that he did not give him a lease; that there had been some talk about a sale to him; that there was no bargain about rent; that there had been some conversation about the sale of the property to be made to Mr. Atkinson; he could not tell what Watts S. Humphrey had to do with it; that he vacated the premises in favor of Mr. Atkinson; that he intended to deliver the possession to Atkinson if Atkinson fulfilled his part of the contract.

He says he spoke to Watts S. Humphrey about looking up the title several days before the contract with Baker was signed. Before the contract was signed he had an abstract; he cannot remember whether he showed it to Mr. Roblin or not, but he talked with Roblin about the title.

Q. What defect did you point out?

A. I don't know that I pointed out any. I think I said that the only flaw there was was a mortgage to Mears & Bates. This was an old mortgage having no connection with this controversy; all parties understood there was such a mortgage outstanding.

Q. That was understood all the time, that there was such a mortgage as that?

A. Yes, sir.

Q. Do you mean to say that you did not ask Mr. Roblin about the Chapman defect?

A. I don't think there was anything said about it.

Q. Now, sir, after you had advised with Watts Humphrey, and had looked at that abstract and knew of that title being in Chapman, you signed that contract with all that knowledge, did you?

A. Yes, sir; well, with the knowledge as far as I knew of it.

Q. Well, now, can you state positively that you were informed that the title really was in Chapman?

A. No, sir, I was not so informed.

Q. Did you really know what the defect was?

A. No, sir, I did not.

This is the explanation given by one of the confederates. If true, it shows that his counsel deceived him and took unfair advantage of his ignorance and confidence. If not true, it evinces a disposition to evade and withhold a disclosure of the actual facts. It is contradictory, disingenuous and improbable.

Watts S. Humphrey was also called as a witness by the defendants, and testified (page 85) that Hiram D. Hurd told him that he did not want the contract drawn up until the abstract was made. He states (page 88) that Hurds & Smith employed him as their attorney to procure an abstract and to draw the contract between Baker and them, and asked his advice as to the condition of the title; that he advised them that the legal title by the record was in Bela Chapman, and advised them to purchase the Chapman title; that he advised them that if they purchased from Baker and the title proved worthless, they could recover back the purchase money on covenants, if he gave them warranty deeds; that he asked them whether they would release him from his obligations as an attorney, as his brother George P. Humphrey contemplated purchasing the Chapman title; they said they did not want the Chapman title; that he bought that title for his brother; he never was employed by the complainant in any matter involving the title to said premises, or in reference to the examination of the title, or in getting advice in regard to said premises, nor in any matter whatever; that he was employed by Hurds & Smith adversely in the matters referred

to, and that they requested him to draw the contract to themselves; that Baker's agent and the defendants Hurds & Smith signed the contract in his office; that Hurds & Smith told him that the complainant was to pay for drawing the contract; that they paid him for examining the title and his advice in the matter; that when his brother purchased from Chapman, Chapman claimed that he owned the premises.

John Atkinson (page 89) testified that he drew the deed from Chapman to Humphrey, and he says, "I heard Chapman say at that time that his title to the premises in question was perfect, or that he had never made any conveyance of it since his purchase of the premises."

George P. Humphrey testified that his brother Watts S. Humphrey showed the abstract of title to him and informed him that he did not wish the witness to purchase until he had seen Hurds & Smith, the defendants, and he furnished his brother with the money to buy the Chapman title for him, and that Hurds & Smith never had made any claim upon him for the land.

The circuit court for the eastern district of Michigan dismissed the bill, giving no written opinion, and assigning no reasons. The circuit judge—Emmons—died shortly afterwards, and no written statement of his views could be procured.

The decision of the circuit court having been general in its terms, and decreeing simply that the bill be dismissed, and no written opinion having been given, the appellant necessarily cannot assign specific errors in it.

He contends that the decree should have been in his favor, and that there should have been granted to him the relief asked by his original and amended bill.

POINTS.

I.

The ejectment suit in the state circuit was pending when this action in equity was brought, and there has been no final judgment in it, nor any decision estopping this complainant from the relief sought in this action.

By referring to the case of *Humphrey v. Hurd, 31 Mich., 436*, it will be seen that the verdict in the court below had been in favor of the defendant, and that the Supreme Court of the state reversed the judgment, and ruled that "the judgment is to be set aside, with costs, and a *new trial* granted, on account of the error in the charge."

There is, therefore, no estoppel against this complainant through the operation of a *final* judgment.

Mr. Baker, the complainant in this action, was not a party to the record in that suit. His claims, as against the defendants in this action, were not the subject of decision. The opinion which the court there expressed was limited to the rights of Hurds and Smith against George P. Humphrey.

The case for relief made by the bill in this case, was not considered by the Michigan court in that case.

There is, therefore, no *res adjudicata*.

Russell v. Plaice, 94 U. S., 606.
Cromwell v. County of Sac, 94 U. S., 351.
Davis v. Brown, 94 U. S., 423.

Our claims in the present action have never been the subject of consideration by the Supreme Court of Michigan.

Baker supposed, and had a right to believe, that he owned the premises in fee. He so swears, and all the evidence sustains him.

Hurds and Smith sought to buy them for the price of eight thousand dollars.

Watts S. Humphrey, a lawyer who had acted for both parties at different times, was *employed in this case by both of them* to draw the contract.

The testimony of Mr. Roblin, a disinterested witness (on page 54 of the record) is positive on this point.

The conduct of Humphrey in making against Baker the charge for the service, is conclusive.

It certainly appears that Mr. Baker's agent looked to and relied upon Watts S. Humphrey as acting for Mr. Baker in the matter, and that he knew this, as did Hurds & Smith.

Hurds & Smith, according to the position of the defendants, separately employed him to make an abstract of the title for them.

The description of the land was furnished to him by Mr. Baker's ~~attorney~~ agent for this purpose.

While occupying this position, with reference to all these parties, he discovered the defect in Baker's title, and that the legal title, according to the record, was in Bela Chapman, who had not, for more than twenty years, occupied or claimed the property; while Baker, and those under whom he claimed title, had been in the possession.

This defect was made known to Hurds and Smith, and by an understanding between the Humphreys and them, it was kept concealed from Mr. Roblin, who says (page 54): "I was not advised of the claim of Chapman on that property until

Hurds had taken possession; I did not know of it. *At the time we went to sign the contract, I made an inquiry of Mr. Humphrey how he found the title. I asked him if he found the title all right. He said it was all right*, excepting a mortgage given by Thompson Smith to Mears and Bates. Hiram D. Hurd was present at the time that inquiry was made. It was after the deed was made by Chapman to George P. Humphrey, the defendant, that I first knew of the defect."

There was, then, on the part of these confederates, not merely the *suppressio veri*, but the *suggestio falsi*—the concealment of the truth, and the utterance of a falsehood.

Then, a conveyance of the naked legal title is got from Chapman to George P. Humphrey, for a nominal consideration, through the agency of his brother, Watts S. Humphrey, who is interested with him in the purchase, George paying the money and Watts S., in connection with Mr. Atkinson, operating upon Chapman, to get from him, for twenty-five dollars, the title to property for a part of which they were willing to pay eight thousand dollars.

They then get Baker's contract, to sell by warranty deed, by which he, subsequently, covenants, for eight thousand dollars, to give, nominally, to George P. Humphrey, but really for the benefit of all the confederates, an unincumbered title to the property, which they knew, according to the state of the record, he did not hold.

Then, George P. Humphrey, with the legal assistance of Watts S. Humphrey and Mr. Atkinson, brings suit in ejectment against Hurds and Smith, who had Baker's contract, and who had gone in possession under it.

Hurds and Smith had their contract or understanding with Humphrey and Atkinson to get the property for a lit-

tle more than one-half of the price which they were to pay to Baker.

Hurds and Smith refuse to aid Mr. Baker or to assert their equity; and Baker then brings this suit, and his equities as represented in it, have never been presented to or decided by the courts of Michigan.

II.

Humphrey can claim nothing on account of being a purchaser of the legal title in good faith and for a valuable consideration from Bela Chapman.

The deed to George P. Humphrey from Bela Chapman was a *quit-claim* deed, and for the expressed and actual consideration of twenty-five dollars, professing to convey the whole of lot three, for a part of which Hurds and Smith were to pay Baker eight thousand dollars.

George P. Humphrey, under such circumstances could take no greater title than his grantor, Bela Chapman held, and could lawfully convey; and the knowledge of Watts S. Humphrey of the particular transaction was notice to him.

May vs. Le Claire, 11 Wallace, 217, 232.

Independently of the character of the deed, the inadequacy of the consideration manifestly establishes the truth of our position.

It will not be pretended that Humphrey could claim anything as a *bona fide* purchaser as against Hurds and Smith through the conveyance from Chapman to him. They were in possession of the property, and that, independently of other considerations, was notice to him of all their rights as against Chapman.

III.

Bela Chapman, if he had not given his quit-claim to Humphrey, would have been estopped from claiming possession from Jacob Sammons, or his assigns or representatives, or from claiming title to the premises under the conveyance of William A. Scott to him.

The following facts appear in the testimony:

First. Scott conveyed to Chapman on February 27th, 1851.

Chapman, on the same day, gave a mortgage for the purchase money to Scott for $3,500, which, from the testimony in the case, would seem to have been the full value of the entire property at that time.

This mortgage, a few months afterwards, was assigned by Chapman to Jacob Sammons, which assignment was shortly afterwards duly recorded in the proper registry of deeds.

All parties seemed to have regarded the real interest in the property to have been in Scott, while the naked fee seems to have been left for the time in Chapman.

Secondly. Chapman never took possession of the premises excepting as lessee.

Brannock's test., folio 95.

He never occupied them claiming as owner.

Chapman, in 1851, leased a portion of the premises from David Sammons, and occupied it for a time with his goods and family, and paid rent.

Francis M. Sammon's test., folio 99.

He paid the rent the next year, in 1852.

Folio 112.

Thirdly. Chapman drew the deed of the premises from Sammons and wife to Belote.

Vincent's test., folios 88, 89.
Metivier's test., folio 115.

And Chapman was a witness to the deed, and as a notary public took the acknowledgment.

There is no doubt, from the whole case, that this deed was for the premises in question.

See also "Exhibit A," folios 193–4, describing this deed as dated November 3d, 1852, and as recorded November 26th, 1852.

"Exhibit A," which was used on the hearing, and which is filed as a part of the record, refers to certified copies of deeds which, by the stipulation preceding it, may be used at the hearing. It should be read in connection with this stipulation, which speaks of originals or certified copies, which are subject to inspection. These certified copies are now produced.

There is prefaced to them, entitled in the case, a stipulation as follows: "The annexed copies of conveyances and contract and proceedings in court may be read on the hearing of this cause by either party, subject to all objections that might be made to the original papers before the examiner.

ATKINSON & ATKINSON,
Solicitors for Defendant George P. Humphrey.

DETROIT, November 29, 1875.

The first paper in "Exhibit A" is a certified copy of this deed.

It is witnessed by Bela Chapman; he took the acknowledgment of it as a notary public, on the day of its date, November 3d, 1852, and on November 26th of the same year it was recorded.

The first parcel of land described in it is lot number 3 on the southwest fractional quarter section 29, in township 38 north, of range 1 west, being the first parcel described in the bill of complaint.

See "Exhibit A" page 2.

The next conveyance contained in said abstract is one from William Belote and Eliza Belote, his wife, to Duncan, dated November 24th, 1853, and recorded on November 27th, 1854.

This embraces lot 3, and Bela Chapman appears as a witness to the signature of Eliza Belote, and he, as notary public, took her separate acknowledgment.

Fourthly. Chapman leased of Sammons a house on the premises.

Chapman, in 1852 or thereabouts, declared to Vincent, who occupied the premises as lessee of Jacob Sammons at that time, in answer to a question "How is it, Chapman—I thought you owned that property?" he said, "No, I never paid anything on it;" he said, "Sammons has a right to rent; it is his property."

Folio 88.

He afterwards, in the same conversation, told the witness that Belote had bought the mill—(that is, from Sammons)—the papers were signed and delivered, and he told witness how Belote paid Sammons for the property.

Chapman at this time resided in Cheboygan.

Fifthly. He told the witness that he took the deed from Scott only to shield Sammons; that afterwards Danceman—(should be Dousman)—paid the debt, and the property went back to Sammons.

Sixthly. Same conversation—folio 89—he told how Belote paid Sammons for the property.

He, Chapman, had drawn the deed to Belote, and it appears—folio 89—that he, Chapman, was then in Mackinaw on business, and was the only person who resided there at the time who drew deeds, mortgages, or other papers.

Seventhly. Chapman lived in Mackinaw, in the immediate neighborhood of Cheboygan, in sight of the property, for several years, from 1851 to 1856—folios 88, 99—was afterwards often in Cheboygan—folio 99—until his death in 1874; never residing on the property except as lessee, and claiming no title to it.

Eighthly. Duncan, in 1854, improved the property by repairing the mill, putting in a new heater and boiler, etc.—folio 94.

Ninthly. A portion of the premises was sometimes vacant after Duncan's death, until Crane, the receiver of Duncan's estate, sold them; but there was no time when there was not some person in possession of, or as agent, in charge of the property.

Folios 99, 100.

Brannock was in the possession of a part of the house on the premises as a tenant from 1858 for a long time—folio 96.

And he was there at the time when Hurds and Smith took possession—folio 94.

Tenthly. John A. Duncan paid taxes until the time of his death, and after his death, Crane, as receiver, paid the taxes from 1854 until July, 1865, when McArthur took possession —folio 100.

We think that these facts present several distinct grounds for holding that Chapman ought to have been, and would have been, held to have been estopped from claiming the property for the following, among other reasons:

1. Twenty-one years out of possession.

2. Treating the property as another's.

3. Admitting it belonged to others.

4. Drawing conveyances of it, and witnessing and taking acknowledgments of them.

5. Making no claim to it during all this time.

6. Seeing others improve it and use it.

7. Never paying any money for it.

8. Occupying himself a portion of it as a lessee, and paying rent to parties under whom Baker claimed.

Let it be borne in mind that Mr. Baker's title is traced back to the conveyances to Sammons, and from him to Belote.

Chapman not only knew of these conveyances and said nothing, but actually prepared, witnessed and acknowledged them.

As to the law on this subject of equitable estoppel, I refer to:

Henshaw v. Bissell, 18 Wall., 271.
Brown v. Bowen, 30 N. Y., 541.
Bank of U. S. v. Lee, 13 Pet., 119.
Shapley v. Rangely, 1 Woodb. and M., 213 and 217.
Bigelow on Estoppel, p. 206.
Hermann's Law of Estoppel, secs. 416–18, 421, 423, 430, 433.
Continental Bk v. Bk of Commonwealth, 50 N. Y., 583.

IV.

Hurds and Smith, the parties contracting with Baker, had no legal right to purchase Bela Chapman's supposed title, or to be interested in such purchase; and they would be estopped from holding or asserting it against Baker in an action of ejectment by him against them.

1. They had bought from Baker, and taken his contract to convey to them in fee, with covenants of warranty.

2. Under this contract they had been let into possession by him, and they were holding possession under him.

Jackson Ex. Dem. Livingstone v. Walker, 7 Cow., 637.

"One making a contract to buy land, and taking possession under it, though strictly the relation of landlord and tenant is not thus created, yet the vendee, in ejectment by the vendor against him, is absolutely estopped from either showing title in himself or setting up an outstanding title in

another. So, for any one coming in under him, either with his consent or as an intruder."

3. The evidence in this case shows that Hurds and Smith, and Watts S. Humphrey and George P. Humphrey, and John Atkinson, were all confederating, and acted in concert against Baker, in getting the Chapman title quit-claimed for $25, and sharing the profits which they intended and sought to make from it.

Hence, none of them can claim, as against Baker, any advantage from the results obtained by this combination.

V.

The dealings of Watts S. Humphrey with Bela Chapman, and the procuring of the quit-claim from him to George P. Humphrey, was fraudulent in law and in fact; and any apparent legal title procured from Chapman, under the circumstances, should be held to have been in fraud of Baker, and should be decreed to be released to him.

First. Hurds and Smith had procured and received the abstract of title, and, therefore, knew the position and the conduct of Chapman.

Second. The evidence shows clearly the combination and understanding between them and Watts S. Humphrey.

Third. Watts S. Humphrey and George P. Humphrey confessedly were acting in concert. Watts did the work, with Atkinson's aid; George was the grantee in the deed, and furnished the money.

Fourth. Knowing that there was an outstanding title in Bela Chapman, Hurds and Smith concealed this from Baker,

and took from him his agreement to convey to them by warranty deed.

Fifth. And this contract was drawn by Watts S. Humphrey, who Mr. Roblin, a disinterested witness, swears was employed by him, for Baker, to draw this contract, and who, in any view of this case, knew that Baker relied on him for such purpose.

He had been Baker's attorney in other matters, and charged the cost of drawing this contract to Mr. Baker.

Sixth. He was also employed for this purpose by Hurds and Smith, and while acting in this capacity for both, he was also, as the defendants claim, employed by Hurds and Smith to get up an abstract of title.

Baker's agent was apprised of this employment, and furnished a description of the property which was to be embraced in the abstract.

Granting, for argument's sake, that he was employed for the purpose of getting the abstract solely by Hurds and Smith for this special purpose, the general employment was to prepare the papers for the sale of the property by Baker, and the purchase by Hurds and Smith.

Engaged in this general employment, and connected with both parties, it was his duty to disclose to Mr. Roblin the defect which he had discovered in the title.

He not only did not do this, but misrepresented the fact, and said it was all right, excepting the Mears and Bates' mortgage, and he made this concealment and misrepresentation on the request of Hurds and Smith.

He then got the title from Chapman for a nominal sum, and took it in his brother's name.

Then, after this was secured, and the defects in the title ascertained, Hurds and Smith execute the contract, and sub-

sequently they make their bargain with George P. Humphrey and his associates, to acquire their title at a less sum, holding Baker responsible on his covenants.

They then surrender, in some unaccountable way, to Atkinson the possession of a property which they had stated was necessary for their use; and they refuse to aid Baker in defending the ejectment suit, by claiming their equity against those holding the ostensible legal title under the Chapman deed, and compelled Baker to bring his suit in equity.

On the ground of the relation of attorney, or at all events, of the relation of agent, between Watts S. Humphrey and Mr. Baker, on the ground of the general arrangements and the dealings between the Humphreys as between themselves and Hurds and Smith, and of the concealment of what had been discovered, and the misrepresentation in regard to the title, and the conspiracy, the existence of which is so developed that each one of the conspirators is chargeable for the acts and declarations of the others; we brand the whole as a fraud, for relief from which we invoke the aid of this court.

VI.

The law upon this subject is elementary. We cite a few cases and authorities.

Story on Agency, sec. 211, upon the general obligations of an agent to a principal.

In the concluding part of the section, he says: "So an agent who discovers a defect in the title of his principal to lands, cannot misuse it to acquire a title to himself, but is to be held a trustee for his principal," citing

Ringo v. Binns, 10 Pet. Rep., 269.

Story's Eq., sec. 193 *a*. 207, 218–19.
Case v. Carrol, 35 N. Y., 385.

VII.

The equities of this case are indisputable.

The complainant seeks to rescue this property, of which he and his grantors had been in possession for twenty years, or more, from the confederating parties, who have sought, for a mere nominal consideration, to deprive him of it.

In relinquishing their possession, they lose nothing which they ought to hold.

The complainant has offered, and offers, to pay them what they paid Chapman, with their costs and expenses.

To refuse him relief, is to leave them in the possession and enjoyment of the property thus fraudulently grasped, while the real owner has no remedy.

VIII.

The jurisdiction in equity over these questions is clear.

This is not an action to recover possession of land. Adequate relief can only be had in equity.

See Eaton v. Trowbridge, 38 Mich., 454.
Lewis v. Cocks, 23 Wall., 466.

THEODORE ROMEYN,
of Counsel for Appellant.

Supreme Court of the United States.

SANDFORD BAKER, Appellant,

vs.

GEORGE P. HUMPHREY,
HIRAM D. HURD,
CHARLES A. HURD, and
DAVID SMITH,
Appellees.

PHILADELPHIA BAR ASSOCIATION

ARGUMENT FOR GEORGE P. HUMPHREY.

GEO. W. DYER, and
ATKINSON, HAWLEY & ATKINSON,
Of Counsel.

BERESFORD, PRINTER, WASHINGTON, D. C.
1880.

Supreme Court of the United States.

SANFORD BAKER,
Appellant,
vs.
GEORGE P. HUMPHREY,
HIRAM D. HURD,
CHARLES A. HURD, and
DAVID SMITH,
Appellees.

Brief of Geo. W. Dyer, of Counsel for George P. Humphrey.

Statement of Facts.

On June 7th, 1872, Sanford Baker, the appellant, having a chain of title to land in Cheboygan, Michigan, derived through William Scott, a mortgagee of Bela Chapman, contracted through his agent, George Roblin, to sell the same to Hiram D. Hurd, Charles A. Hurd and David Smith, appellees, and they entered at once into possession of the premises.

On June 10th, 1872, George P. Humphrey, the other appellee obtained title to the same land from Bela Chapman, the mortgager.

On July 1st, 1872, George P. Humphrey brought suit for ejectment against the Hurds and Smith, in the proper State Court of Michigan, which suit was and is now defended by Baker, the appellant, and is yet pending.

On July 20th, 1872, Baker filed a bill in Chancery in the State Court of Michigan, against George P. Humphrey and Bela Chapman, asking for the benefit of the Chapman title, and for an injunction to stay proceedings in the ejectment suit, which bill after demurrer and answer had been filed, was, on January 6th, 1873, discontinued by Baker.

On October 24th, 1872, Baker deeded the premises to the Hurds and Smith, according to the terms of the contract of June 7th, 1872, (Record 55,) which deed was not delivered until July, 1873, and took a mortgage back to secure a part of the purchase money.

Record, 56, 57, 58.

On January 6th, 1873, Baker filed the original bill, and on October 11th, 1875, the amended bill, which is now in this court.

The pending bill asks to have the Chapman title enure to the benefit of Baker, to enjoin Humphrey from conveyance of the property, to enjoin all the appellees from asserting any title through Chapman, and to enjoin the prosecution of the pending suit of ejectment, or any other like suit.

The bill was properly dismissed for the following reasons:

I.

The Court below could not with propriety exercise jurisdiction, while the suit for ejectment was pending.

1. "In all cases of concurrent jurisdiction, the Court which first has possession of the subject, must decide it."

Marshall, C. J., in Smith vs. McIver, 9 W., 532.

2. The "subject" was the same in the suit on eject-

ment as in the pending bill, the parties the same, and the proofs the same.

"I don't think I am employed in this case; am employed in the ejectment case mentioned in the bill. I was an attorney on the trial. When I say this testimony was given by Mr. Humphrey, I was employed by Mr. Baker. I am still retained in that case, I suppose the facts in that case and in this are the same. The same questions are involved in the two suits As far as I heard, the testimony was introduced in that case to the same points to which testimony has been introduced into this, as I understand, the questions involved are precisely the same and they depend upon the same state of facts."

GEORGE W. BELL.

Record, p. 56.

"I am the complainant's solicitor in this cause, I have acted as Counsel in the ejectment suit mentioned in the bill. I think I know the question in controversy in each case. I think the defense in the ejectment case, and the right to relief in this case, depend upon the same state of facts. The ejectment case has been tried twice. I was present at both trials. Testimony was introduced to some of the points to which testimony has been introduced in this case. The evidence as to the drawing of the deed of Sammons, by Chapman to Belote, was introduced into the ejectment suit.

"There was no evidence actually introduced as to that point. Mr. Metivier was sworn and asked as to whether Chapman drew the deed or not. He answered that he could not tell. John Vincent was not sworn to that point, as I understand. The only difference is that in this case I have examined two witnesses, and in that case only one. Metivier then, although questioned in that case, gave no evidence which, I think, tended to show that Chapman

drew the deed. I think there is no other point to which witnesses have been examined in this, to which they were not in that."

D. C. HOLBROOK.

Record, p. 57.

3. If judgment had been had in the ejectment suit, it might have been pleaded in bar in this controversy.

Watson vs. Jones, 13 Wall, 679.
Beloit vs. Morgan, 7 Wall., 619.

II.

The Court below could not grant the principal relief sought in the bill, viz., an injunction of proceedings in the ejectment suit, without a violation of the Statute.

R. S. 720.
Dial vs. Reynolds, 6 Otto, 340.

1. As the Court in this instance could not enjoin the prosecution of the suit in ejectment, the granting of the other injunctions and relief sought in the bill would have led only to confusion and conflict between courts of concurrent jurisdiction, and would not have been of practical benefit to the appellant.

2. Such a decree at best would have been made, conditioned upon the result in the ejectment suit.

III.

The appellant was in no position to invoke equity in his behalf.

1. Adopting his statements in the bill it is charged that the Hurds and Smith before they signed the contract of June 7th, 1872, conspired with the Humphreys to acquire the Chapman title, and thereby defeat appellant's title and sale. It appears from the proofs, however, that

after thus conspiring the Hurds and Smith did immediately sign the contract, and did make a payment under it, (Record, 56,) so that in fact, the sale was not defeated.

2. It appears from the proofs, that so far from the Hurds and Smith conspiring with the Humphreys to acquire the Chapman title to defeat appellant's title, that the Hurds and Smith have made payments to Baker during the pendency of the ejectment suit, (Record, 56,) that they are defendants in that suit, and permit the appellant to have charge of their defense, (Record, 84,) and that they have never had any conveyance under the Chapman title, (Record, 84,) so that if they ever did conspire, their conspiracy terminated at once, and has never injured the appellant.

3. Baker had a contract of sale with the Hurds and Smith, by which they were bound to pay him $8000, in annual payments of $2000 and interest, the last payment to be August 1st, 1875, and at the end of that time he was to give them a good and sufficient deed of the property.

Instead of holding on to the advantages of his contract, he voluntarily waived and abandoned the same, and gave them October 24th, 1872, a warranty deed of the premises taking back a mortgage.

This was done long after Baker knew of the Chapman title, of which he had full knowledge, as early as July 20th, 1872.

Record, p. 68.

And up to this time, viz., July 20, 1872, the proofs do not show any effort on the part of Baker to acquire the Chapman title. His offer to pay $25 for it, was made January 6th, 1873.

4. If Baker did not know of the Chapman title, it was culpable negligence upon his part. Chapman's deed was

recorded. Baker's attorney, Bell, had the abstract, in which the Chapman title appeared.

Record, 57, 61.

Baker's chain of title shewed a succession of quit claim deeds from 1852 to 1866.

In the first warranty deed, when Baker bought, the consideration named was $250, a sum so small compared with the real value of the land as to attract attention; and in the deed of Mears and Bates to Smith, where Baker was a co-owner, which deed covered, apparently, five-ninths of the property, the damages for loss of title was limited to $250.

Record, 91, 92.

He knew this land was excepted from covenants of warranty.

Record, 61.

It looks very much as if Baker did know about the Chapman title, and deliberately tooks the risks.

"I don't think I ever demanded a deed from Chapman before his sale to Humphrey; don't know of any reason why he should have deeded to me before he deeded to Humphrey."

Record, 61.

5. There was not sufficient proof to justify the Court below in finding as matter of fact, that W. S. Humphrey was in the employ of appellant when he bought the Chapman title, so that his purchase would enure to the benefit of appellant.

W. S. Humphrey swears that he was not.

Record, 34, 35, 56, 57, 86.

H. D. Hurd swears the same.

Record, 79.

Roblin, Baker's agent, swears to the contrary.

Record, 54.

Baker's attorney, in his presence, asked H. D. Hurd and Smith to file a bill claiming the benefit of the Chapman title.

Record, 60.

The Hurds and Smith in the ejectment suit, put in proofs that W. S. Humphrey was in their employ.

Humphrey vs. Hurd, et al., 31 Mich., 436.

6. All the employment of W. S. Humphrey as attorney for Baker in this instance of which there is any proof, was to draw the contract of sale of June 7th, 1872, for which he charged $2, which he says he never got, and explains how he came to charge it to Baker.

Record, 35.

Such an employment, if it existed, would not give to Baker the benefit of Humphrey's purchase from Chapman.

Adamson vs. Evitt, 2 R. & M., 70.

GEORGE W. DYER,
Of Counsel for Humphrey.

51 Mo. 453
31 P. State 331
43 P. State

Bigelow 46) -
Knowledge of facts
3 Wash. n 95 -
may. page 461

SUPREME COURT

OF THE

UNITED STATES.

SANFORD BAKER,
Appellant,

vs.

GEORGE P. HUMPHREY,
HIRAM D. HURD,
CHARLES A. HURD, and
DAVID SMITH,
Appellees.

Brief of Atkinson, Hawley & Atkinson, of Counsel for Geo. P. Humphrey.

We submit the following reasons why the decree dismissing the bill should be affirmed:

I.

1. The bill alleges the pendency of an ejectment suit in the State Courts, and shows that those Courts have full possession of the controversy.

2.

Under such circumstances the Federal Courts will not interfere.

II.

2. The testimony shows that since filing the bill, complainant has submitted the whole controversy to the State Courts, and it has been disposed of adversely to him, and become *resadjudicata.*

III.

3. The bill alleges the complainant to be the *legal* owner, and that he is being pursued at law by the defendant, Humphrey.

In such a case, there is no ground on which a Court of Equity would be justified in interfering.

IV.

The complainant has not alleged or established such a title as warrants the relief prayed, or any relief.

Before discussing these points, it may be profitable to give a brief

STATEMENT OF THE CASE.

The original bill in this case was filed in January, 1873, and alleged in substance that one Scott, in 1851, was, and for a long time before, had been the owner of a piece of land, in Cheboygan County ; and in February, of that year, conveyed it by warranty deed to Bela Chapman, whose deed was recorded in March following. That Chapman executed a mortgage back to secure the purchase price, which was also recorded.

That Chapman never took possession, and Scott and those claiming thro' and under him, *by said mortgage* and deed, took possession, and have had it ever since, adversely to Chapman.

It alleges the assignment of Scott's mortgage, to Sammons, in November, 1851, and subsequent conveyances from Sammons, and those claiming under him, to complainant.

It then alleges that Chapman never conveyed the land, (except to Humphrey, June 10th, 1872,) other than by said mortgage. That he resided near it, for years, and knew that Scott and others were in possession, claiming adversely, *under the assignment of the mortgage, from Scott to Sammons*, and the subsequent deeds from Sammons, and those claiming under them. That he never claimed any title, and "that he not only drew several warranty and quit-claim deeds of said premises, but witnessed the same, and others, and as a Notary Public, took the acknowledgment thereof, without giving any notice of any claim, if any he had.

It then alleges complainant to have been the *legal* and *equitable* owner, and in the *actual possession*, until he entered into the contract with the defendants, Hurds and Smith, June 7, 1872, to sell them the land for $8000: That he employed Watts S. Humphrey, an attorney *to draw* the contract, and he drew and witnessed it, complainant paying his charges, by which contract he agreed to convey by warranty deed, and under it Hurds and Smith entered into possession, and still remain in possession.

It then alleges that soon *after entering into possession, Hurds and Smith employed Mr. Humphrey to procure an abstract of the title*, and he discovered

that there was no deed from Chapman, and that he *conceived* the idea of not only defeating complainant's title, but of *defeating the purchase made by Hurds and Smith, his clients*, and to that end procured a conveyance from Chapman to his brother, Geo. P. Humphrey, the defendant, who had no knowledge of the matter. That Watts S. Humphrey conducted the whole business, and paid Chapman $25.00. That the deed from from Chapman was immediately recorded, and ejectment in the State Court commenced, against Hurds and Smith, which is still pending.

That defendant, Humphrey, claims to own the land under the deed, and persists in his ejectment suit, and Hurds and Smith refuse to institute proceedings to obtain the benefit of his deed.

It then alleges a willingness to pay and a tender of the $25, and expenses, and Humphrey's refusal to receive it, and submits that complainant is entitled to the benefit of the Chapman deed, *and that Hurds and Smith are also entitled to it to* support their title from complainant, and prays a perpetual injunction against prosecution of the ejectment suit, and a release and quit-claim from Humphrey to complainant.

This bill was answered in March, 1873, and a replication was filed in April.

Nothing more was done until September 18, 1874, when complainant's solicitor filed an affidavit showing, among other things, that in the meantime the ejectment suit of Humphrey, against Hurds and Smith, had been twice tried, and that he acted for them, in both trials. That the first trial was in June, 1873, and resulted adversly to Humphrey. That it it was reversed by the Supreme Court of the State, in January,

1874. That it was again tried in August, 1874, and resulted again adversely to Humphrey, and was on its way to the Supreme Court.

October 5th, 1874, the time for taking testimony was extended.

In February, 1875, defendant commenced taking testimony.

A further extension of time was given complainant, July 6, 1875, and the testimony was taken in August following.

The case was brought on to be heard in October, and resulted in permission to file an amended bill, the testimony taken to stand.

Record p. 71.

The amended bill was filed October 11, 1875, and answered October 18, 1875. And in April, 1876, the case was heard, and the bill dismissed.

"The amended bill omitted the allegation that Hurds and Smith employed Humphrey to examine the title, and alleged only: 'that after said Humphrey was so retained and employed to *draw said contract*, and before the same was signed, as aforesaid, the said Watts S. Humphrey, and the said Gorge P. Humphrey, and the said Hurds and Smith, all of the defendant, ascertained the title of said premises, (so far as the record showed the same,) to be in Bela Chapman, and that he appeared to be true owner thereof, and the same was the subject of conversation between them.'

"The liability of your orator to said Hurds and Smith, if he signed the said contract, and whether the title of said Chapman was good and valid was discussed; that the fact of said title appearing to be in said

Chapman, and your orator's title defective was intentionally concealed from your orator by said Watts S. Humphrey and all the defendants; and your orator knew nothing thereof until after signing said contract, that said Watts S. Humphery and said defendants knew that said Chapman resided but a short distance from Cheboygan, where said premises are situated, and they conceived the plan of secretly acquiring the title of said Chapman, to said premises, and thereby defeat your orator's title and said sale; and accordingly said Watts S. Humphrey, on the tenth day of June, for the small sum of twenty-five dollars, procured a quit-claim deed of said premises, from said Chapman, to be made to the said George P. Humphrey, a brother of the said Watts S. Humphrey, and who, while acting for your orator and before the signing of said contract, had informed said George P. Humphrey of all the facts of said intended sale and premises, and of the situation of said title, and of his being so engaged to draw said contract."

The deposition of Mr. Holbrook, the solicitor for the complainant, shows, that before the testimony on complainant's part was taken, the ejectment suit had been twice tried in the State Court. That he had acted as counsel on each trial, and that the defence, in the ejectment suit, and the relief asked in this, depended on the same state of facts.

That complainant assumed that defence. That on the first trial judgment was rendered against Humphrey because defendants were in possession, claiming under the mortgage from Chapman to Scott.

That on the second trial, judgment was rendered against Humphrey on account of Watts S. Hum-

phrey's connection with his purchase. That both judgments had been reversed.

These facts were fully set up in the answer to the amended bill.

The testimony, as well as the sufficiency of the bill, can best be considered under the several points, which we will discuss in the order stated.

I.

The State Courts were, when the bill was filed, in full possession of the controversary. An ejectment suit had been commenced by defendant, Humphrey, against defendants Hurds and Smith. It is a well recognized principle, that when one Court has obtained possession of a controversary, the Courts of concurrent jurisdiction will not interfere.

The maintenance of this principle is especially important, as between State and Federal Courts, and it has received the sanction of this Court on several occasions.

13 Peters, 136, Wallace vs. McConnell. After the commencement of this suit in the Federal Court, an attachment or garnishee issued from the State Court of Alabama, and was pleaded *puis darien continuance.*

Mr. Justice Thompson, delivering the opinion, says: "The jurisdiction of the District Court, * * having attached * could not be arrested by any proceeding in another Court. This would produce a collision in the jurisdiction of the Courts that would extremely embarass the administration of justice."

1 Otto, 254, Haines vs. Carpenter. A bill was filed to enjoin certain suits pending in a Louisiana Court. Justice Bradley, in delivering the opinion, says: "The great object of this suit is to enjoin and stop litigation in the State Courts, and to bring all the litigated questions before the Circuit Court. This is one of the things the Federal Courts are expressly prohibited from doing." Citing, R. S. Sec. 720.

6 Otto, 340, Dial vs. Reynolds. A bill was filed in the Circuit Court, for the Eastern District of Tennessee, among other things, to quiet complainant's title, and enjoin Reynolds from prosecuting an ejectment suit pending in a State Court.

Mr. Justice Swayne, delivering the opinion, says: "The gravamen of what is desired as to Reynolds, is to prevent his proceedings at law in the State Court. Without this, all else is of no account. Such an injunction, except under the Bankrupt Act, no Court of the United States can grant."

See also Shelby vs Bacon, 16 How. 56.

II.

The testimony shows, that since the filing of the bill, the complainant has submitted the whole controversary to the State Court, and it has been disposed of.

The complainant made himself a party to the ejectment suit by defending it for Hurds and Smith.

After filing this bill, complainant, instead of prosecuting it, went to trial in the ejectment suit, succeeded in the trial, and was defeated in the Supreme Court, and went to trial again in the Circuit, succeeding

again, and only commenced prosecuting the suit when the second trial of the ejectment suit was about to be reviewed by the Supreme Court.

After obtaining leave to proceed, in October, 1874, he let the suit sleep until the Supreme Court had decided the whole controversy.

On the second trial, complainant, in defending Hurds, examined witnesses to the same points that he has examined witnesses to in this case.

See Holbrook's testimony, page 57.

To show how fully and completely the Supreme Court passed upon the whole controversary, we cite from the opinion of Charles J. Graves, 31 Mich., 436.

"Humphrey brought ejectment against defendant in error, for premises in the village of Cheboygan. The suit was commenced on the first day of July, 1872, and was tried before a jury in August, 1874, and the defendants succeeded.

"It was admitted that both parties claimed title through Jacob Sammons, and that defendants were in adverse possession when the action was commenced.

"On the part of the plaintiff the following chain of title was shown: First, a deed from Sammons to William Scott, bearing date February 23d, 1850, and recorded on the 8th of the succeeding March. Second, a deed from William Scott to Bela Chapman, dated February 27th, 1851, and recorded on the 8th of March thereafter; and third, a deed from Bela Chapman to plaintiff, dated June 10th, 1872. An unbroken paper title was thus traced to the plaintiff, and a *prima facie* right to recover shown.

"The defendant's counsel then gave in evidence a deed from Sammons, to one Belote, dated November 3d, 1852, and recorded on the 26th of the same month. This deed, it will be noticed, was about two and a half years later than the deed from Sammons to Scott, in the plaintiff's chain of title. Following this proof, the defendants next gave in evidence a deed from Walter Crane, as receiver of the estate of Jeremiah Duncan and others, to McArthur, Southwick, Swan and McDonald, dated July 13th, 1865, and subsequent conveyances, from them, and by and through others, to one Sanford Baker, and a contract of sale by Baker, on certain conditions, to defendants. This contract was dated June 7, 1872, or three days earlier than the deed from Chapman to plaintiff.

"The defendants then gave evidence tending to show that on receiving the contract from Baker, they entered under it; that one Watts S. Humphrey, a brother of the plaintiff, was employed by them as their attorney to draw the Baker contract, to examine in their behalf the title to the property, and procure an abstract; that in this he acted on their request, and not on that of Baker, and in the course of his investigation became aware that Bela Chapman had not yet conveyed; that this fact being so ascertained by said Watts S. Humphrey, in the cause of his service for defendants, the plaintiff derived knowledge of it from him, and knew also the fact that he found out the non-conveyance by Chapman under the circumstances before stated; that on discovering, however, that Chapman had not conveyed, Watts S. Humphrey advised the defendants of it, and they declined to have anything to do with the Chapman title, and determined to

take, and did take the contract from Baker; that afterwards, the plaintiff procured Watts S. Humphrey to buy the Chapman title for him, and that no conversation occurred between the parties to the case touching the matter in suit.

"An offer of forty dollars, was made by defendant's counsel for the expense of plaintiff in procuring the Chapman title.

"On the part of the plaintiff evidence was then tending to show that defendants had never asked plaintiff for the title he obtained or had in any way elected to take it.

"He further offered to show that before entering into the Baker contract, the defendants verbally discharged Watts S. Humphrey, from all obligations to them concerning the Chapman title, and consented that he might buy it for himself or others; that this fact was made known to plaintiff, and that in getting his brother to buy for him he acted upon it; and further that one Taylor, some days prior to the contract, informed Baker and his agent of the existence of the Chapman title, and that they said in substance that it did not amount to anything.

"These offers were respectively excluded by the Court on the objection by the defendants that the evidence was immaterial.

"After this full statement of the case it is not deemed necessary to refer to the charge or requests, further than to say, that the Court refused a request by the plaintiff, that he was entitled to a verdict, and, on the contrary, submitted the case to the jury upon a theory of defence, which in substance, required them to find for the defendants.

"I think this was error, and that the plaintiff was entitled, as the case stood, to the distinct charge in his favor, which was refused.

"The evidence on his side went to show, and, unless overborne, or impugned, was conclusive to show a complete legal title and right to recover.

"The regularity in the links in his claim of title seems not to have been questioned at all, and the only matter brought forward to impair his right, was the use made by him of Watts S. Humphrey, and his knowledge to get the Chapman title.

"Without stopping to inquire whether in an action of ejectment, which turns upon the legal title it would be a good defence, if admitted, that the deed from Chapman to plaintiff, was obtained through a violation of duty Watts S. Humphrey owed to defendants as a consequence of his position as their attorney; it is still too plain for argument, that if there was no violation of of duty at all on the part of Watts S. Humphrey, his doing, and the use made of his knowledge, can afford no semblance of defence whatever; and looking at the case as the record shows it, I am unable to see that he derogated in the least from any legal duty he owed to the defendants.

"All the evidence allowed to go to the jury upon this subject was given by the defendants themselves, and they cannot repudiate part, and claim benefit from the rest; and this evidence shows explicitly that when he discovered the Chapman title was unconveyed he advised the defendants of it, and thereupon they deliberately decided they would not meddle with that title, but would go on and take the Baker title. The election excluded the Chapman title from their plan, and

left it definitely not comprehended by their purpose, but quite independent of their business and object; and the duty of Watts S. Hmphrey did not extend to matters which they distinctly refused to have anything to do with, and discarded from their attention.

"His duty went no further than the rights they chose to hold. And when it was settled that the Chapman title should not be acquired or considered within the purview of their operations, no duty in their favor rested upon him that he should thereafter abstain from saying or doing anything to promote a transfer of that title from Chapman to third parties. He was placed completely at liberty, in that regard, by the deliberate decision of the defendants themselves.

"He seems through out the entire business to have acted openly and fairly."

It will be seen that this decision covered the whole question. The error found was the refusal of the trial Court to instruct the jury to find for Humphrey.

It was after this decision was pronounced that complainant began to move in the suit.

Having had a full hearing in the State Courts, can he now review their decision in the Federal Courts? The answer is obvious that he cannot. To hold otherwise would give him an unwarrantable advantage over his opponent upon whom the decision in the State Courts is final. It would be to allow him to experiment with the tribunals of the State, and if their decisions displeased him, then resort to the Federal Courts of concurrent jurisdiction in hopes that individual judges might entertain different opinions on the same question.

III.

The bill alleges the complainant to be the *legal* owner, and that he is being pursued at law, by the defendant, Humphrey.

In such a case there is no ground on which a Court of Equity would be justified in interfering.

No principle is better settled than that in all cases of concurrent jurisdiction the Court which first has possession of the subject must adjudicate it.

This exact question has been passed upon in the Supreme Court, of Michigan, and in this Court.

13 Mich., 367, Moran vs. Palmer. In this case, the question raised was similar to the one under discussion. The Court says: "We have thus presented to us, the anomaly of a party who asserts that he is possessed of a complete legal title to lands which are occupied by him, and who points out no difficulty in the way of presenting and establishing such title, appealing to a Court of equity for relief against other parties who were pressing their claims against him at law, and who have already obtained an adjudication in their favor. Argument to show that this bill cannot be sustained, is unnecessary. * * *

"A Court of Law is the appropriate tribunal for the trial of titles to land. * * * *

"The claimant of a legal title has a right to have the facts on which his claim is based submitted to a jury, and it is only when the remedy at law is inadequate that resort can be had to equity. * * *

"And when a party comes into equity for relief, he must set forth in his bill the circumstances which deprive him of a legal remedy. * * * *

"A bill to quiet title on behalf of the legal owner is only entertained when the party is not in a position to force the adverse claimant into a court of law to test its validity; this happens when the holder of the legal title is in possession and an adverse claim is set up which no steps are taken to enforce; but when each party claims the legal title, and a court of law is already possessed of the case, and it is not alleged that either fraud, accident or mistake has intervened to prevent the possessor establishing at law all the title which he claims, the remedy of law is perfect, and equity cannot interfere."

The decisions of this Court are equally in point.

Smith v McIvor, 9 Wheat , 532

It is no answer to this position to say that the question could not be properly settled at law. When a case is submitted at law, even though more properly a matter of equitable jurisdiction, the decision is respected in equity.

31 Mich., 279, Spoon v. Baxter.
10 Mo , 100, Wool et al v. Ruland.
14 Ark , 32, Button v. Hynson.
11 B. R., 232 Mays & Horner v. Fritton

Nor is it an answer to this position to say that a Court of Equity can, by making Humphrey's deed, give more complete relief than the Court in which the ejectment was pending.

That was equally so in Dial vs. Reynolds, 6 Otto, cited above, and in Moran vs. Palmer, 13 Mich.

The relief to be granted is principally a perpetual injunction against the prosecution of the ejectment suit.

IV.

The complainant has not alleged or established such a title as warrants the relief prayed, or any relief.

The complainant rests his title upon these grounds:

First.—On adverse possession under the mortgage given by Chapman to Scott.

Second.—On estoppel as to Chapman, he having drawn deeds in the adverse ~~claim~~ of title and giving no notice of his claims.

Third.—On the grounds that Watts S. Humphrey, who bought for Geo. S. Humphrey, was so bound to him that he is entitled to any purchase he oould make.

The first ground complainant's counsel have informed us, is abandoned. The evidence clearly disproves the claim. The land was common and unoccupied, with a few trifling interruptions from the date of the deed to Chapman, in 1851, until Hurds and Smith took possession, in 1872.

The second ground is equally untenable.

The allegation of estoppel is contained in the seventh paragraph of the bill, and is to the effect :

1. That Chapman never claimed any title.

2. That he drew, witnessed and acknowledged several deeds in complainant's ~~claim~~ of title, without giving notice of his claim.

3. That he knew Scott was in possession, claiming adversely *under* the *assignment* of his *mortgage.*

These allegations if true, taken in connection with the fact that Chapman's deed was on *record*, and therefore notices to the world would create no estop-

pel. There is no allegation that anyone was ever influenced by Chapman to change his own position with inferences to the land.

To create an estoppel it must appear:

1. That the party against ~~him~~ whom, it is asserted, has in some way misled the party asserting it, and

2. That that party has, on account of being so misled, changed his own position, and will be injured if the other is permitted to assert his title.

We are aware that there are cases in the books where persons who were present, or assisting, when a mortgage was given, are held estopped from asserting a previous one of which they gave no notice.

This doctrine is not applicable, however, where the previous mortgage is recorded.

The bill is also defective in not alleging that Humphrey knew anything of Chapman's connection with the conveyances.

The evidence falls far short of proving an estoppel.

John Vincent says, in crossing from Mackinac to Cheboygan about 1852, he said: "How is it, Chapman, I thought you owned that property?" And he answered: "No, I never paid anything on it; Sammons has a right to rent it. It is his property. Some time after he saw Chapman with a deed in his hand looking for Sammons and wife, and Chapman said it was a deed of the mill property, which did not include the land in question. At another time he said his deed was to shield Sammons, and Dousman paid the debt, and the property went back to Sammons. Again he told him Belote had purchased from Sammons.

Metard Metivier swears that he and Chapman witnessed the deed from Sammons to Belote.

On cross-examination he says: "I don't know how I fixed the fact that it was to Belote. I don't recollect seeing Belote's name in the deed. I don't recollect whether Belote was present. Mr. Chapman had the deeds when I saw them, but who took them afterwards I can't say.

This is substantially all the evidence on the subject.

It is sufficient to say of it that John Vincent is an entire stranger to the title. What was said to him never influenced any one, and no one can be estopped by it.

No one was present when the deed drawn by Chapman was delivered. When last seen it was in his hands. Whether he gave Belote notice of his own title or not does not appear.

This brings us to third and main question as to Mr. Humphrey's connection with the purchase for his brother.

The bill alleges that complainant employed one Watts S. Humphrey, of Cheboygan, an attorney and counselor-at-law, duly admitted to practice as such, and who was then and for a long time prior thereto had been the attorney of complainant *to draw a contract* for the sale of said premises, and that he did draw such contract. See paragraph 9, and proceeds as above recited.

* * * * * *

The complainant seeks to obtain the advantage of this purchase from Chapman on the ground that Watts S. Humphry was his attorney, and could not purchase in an adverse title, and the relation of attorney and client, it is claimed, springs out of the em

OUR BEST REPRODUCTION POSSIBLE

Due To

CONDITION OF ORIGINAL

employed him *to draw the contract*, and he afterwards rendered a bill for $2, for drawing it. He swears he heard Hurd ask Humphrey to look into the title, but adds "I am positive as far as I know, Hurd was not acting in any way for Mr. Baker. Mr. Hurd did not employ Mr. Humphrey as attorney for Mr. Baker, I am certain of that."

The complainant was asked if he considered Humphrey bound to him beyond merely drawing the contracts said, "I dont know that I understand anything of the kind."

On the pleadings and proofs, the strongest claim the complainant can make, is that he employed him to draw the contract between himself and Hurd and Smith.

If complainant's theory is right an employment to draw a deed or a contract operates as a very sweeping retainer with reference to the estate. It would tie the hands of the attorney as to all future litigation and negotiations touching it. The trifling fee of $2.00 paid for drawing a paper would give the party paying it the right to the result of future labor that may be worth thousands. He confides nothing to the attorney, but uses him in an almost mechanical capacity, and yet becomes entitled to all he may ever learn from whatever source, to even the confidential communications of others, in which he could otherwise claim no interest.

The case before the Court, it will be remembered, is this: Bela Chapman owned the land. Baker had no claim whatever upon him or upon his title. Baker had no title, but attempted to sell the land, and claims that he employed Mr. Humphrey to draw the contract

of sale. Humphrey afterwards bought Chapman's title for a third party, and now Baker, who had no right as against Chapman, says to Chapman's grantee: "You must deed to me, because, although I had no interest in the land, you knew I employed Watts S. Humphrey to draw a contract regarding it."

Upon what principle can such relief be granted?

The principal duties of an attorney are: To be true to the Court and to his client; to manage the business of his client with care, skill and integrity; to keep his client informed as to the state of his business; *to keep his secrets confided to him as such.*

2 Bouvier Law Dec. Atty., 5.

And he is privileged from disclosing *such secrets* when called as a witness.

Ib.

There is no question here as to Mr. Humphrey's duty to a Court, for the matter was not in litigation. There is no question but he did what he was employed to do, i. e., to draw the contract, with care, skill and integrity. There is no question about keeping his client informed as to the state of his business, for he had charge of no business for him except to draw the contract, and that was done.

As far as complainant is concerned, the bill does not allege that he confided anything whatever to Mr. Humphrey. He merely suggested to him to draw up a contract. The testimony is equally clear that no confidence whatever was imposed. If the rule extended no further there than to secrets confided *by the client*, we might dismiss the subject here.

But the rule goes further and covers all information acquired by the attorney, because of his employment, or in the course of his employment.

But the bill does not allege that Mr. Humphrey obtained any knowledge *in consequence of his employment, or in the course of his employment.* It alleges merely that after he was employed, and before the contract was signed, he and all the defendants ascertained the state of the title, *so far as the records showed the same.* This means, if anything, that they examined the public records and ascertained their contents. But in the course of his employment to draw a contract, he would have nothing to do with the records; nor is it alleged or pretended that he examined them, because of such employment.

The bill seems to us fatally defective in this respect.

The question of whether a communication is confidential has usually arisen in determining whether the attorney could testify to it. The same rule which enjoins a duty to keep a matter secret, confers a privilege which enables him to do so, and we may always determine whether that duty existed by determining whether the privilege would be recognized by the Courts.

Suppose Mr. Humphrey had been put upon the stand to show something he learned regarding this title from some third party, or the public records, could he decline to answer because, when he learned the fact, he had drawn a contract for Mr. Baker which was not yet signed, or was under a contract to draw one?

The principle which protects communications made to an attorney requires:

1. That they come to him in his professional capacity.

2. Either from his client or on his account, or for his benefit in the transaction of his business.

3. That the attorney should know what is communicated *only* through his professional relation to the client.

4. That they should be in their nature the subject of a confidential communication.

Humphrey's knowledge of Chapman's title did not come from Baker or on his account or for his benefit in the transaction of his business, but from entirely different sources.

He did not obtain it by reason of his professional relation to Baker.

It was a matter of public record and every one connected with the estate was bound by law to know it, and cannot be considered a secret at all.

The deed under which Baker claimed showed that his title to this piece of property was not warrantable. He had bought apparently for $250 what he was selling for $8,000. He had had the title examined by an eminent lawyer..

The authorities are quite uniform against the claim made.

Adamson v. Evitt, 2 R. & M., 70. Evitt was solicitor for one Lea, and proposed to sell Adamson an annuity on Lea's life for £35 per annum for £700. Adamson entered into the arrangement, and consented to Lea drawing the deeds. It was afterwards discovered by Adamson that Lea was bankrupt, and the an-

nuity failed. He filed a bill against Evitt claiming that, as he prepared the contract for him, he became his agent, and was bound to disclose to him what he knew about Lea's circumstances. Bnt the Master of the Rolls, Sir John Leach, said: "*The mere preparation of the deed would not place the defendant in a confidential relation toward the plaintiff in this transaction.*

Thompson vs. Wilson, 29 Ga., 539. This was an action of assumpsit, by Wm. A. Wilson, against G. W. Thompson.

The defendant pleaded the general issue, and failure of consideration.

At the trial defendant's attorney, F. C. Fuller, offered himself as a witness for the defendant to prove that plaintiff told him what the consideration of the note sued on was, at a time when he desired him to collect the note after he had been retained by the defendant. Plaintiff objected to the witness, and the testimony proposed, on the ground that he was an attorney in the cause, and that the facts proprosed to be testified to, came to his knowledge during the relationship of client and attorney.

The Court sustained the objection, and counsel for defendant excepted.

By the Court, Benning, J., delivering the opinion, "To render an attorney incompetent to testify concerning a matter, knowledge of it must have come to him *from his client*, or *during the existence, and by reason of the relationship of client and attorney.* (Cobb 280) Knowledge of the matter about which it was desired to question Mr. Fuller, the attorney for

Thompson, did not come to him from Thompson, and although it may be that it came to him during the existence of that relationship of client and attorney, between him and Thompson, yet it did not do so by *reason* of that relationship. That he was Thompson's attorney was rather a reason calculated to prevent such knowledge from coming to him. * * * Yet the Court below held Fuller incompetent. We think, therefore, that it held wrong.

DeWolf vs. Strader, 26 Ill., 225. Strader was possessed of divers lots and parcels of land. He was largely indebted to various parties. He conveyed the property to Jones, a clerk in his employ, and a minor. The creditors tried to set the deed aside as fraudulent, and executed to hinder and defraud Strader's creditors. Jones replies that the money belonged to him which Strader used in purchasing the property. Wm. D. Barry, an attorney, who drew the deed from Strader to Jones, was called as a witness. He gave his evidence. Exceptions were taken to the whole of it, for the reason that he is called on to disclose, and does disclose, what was communicated to him by defendant Jones while he was a client of said Barry.

In the opinion of the Court, Breese, J., says: "The principal question in this case is, chiefly, as to the admissibility of Mr. Barry as a witness against the defendants in error. When giving his testimony he made no objection that he was their counsel, nor did he claim the privilege of his clients, but voluntarily stated all he knew of the transaction, as communicated to him by the defendants. He now claims the privilege of his clients, and contends that he was their counsel when the disclosures were made. *It*

does not appear that such a relation did, in fact, exist at the time Mr. Barry wrote the deed, or had the conversations. *There is no retainer shown, or offer to retain, or fee paid. This, and this, only, can consumate that relation.* The weight of evidence is, clearly, that Mr. Barry was acting as scrivener, merely, to draw a deed. *He was not consulted as counsel, or asked for a legal opinion on a state of facts, but to draw a deed.*

Katton vs. Robinson, 14 Pick., 416.

We have discussed this question as it would be had Mr. Baker employed Mr. Humphrey to draw the contract. But the proof is overwhelming that he did not employ him to draw the contract or do anything else.

Mr. Humphrey swears he was employed to draw the contract for Hurds and Smith. (Folios 91, 122.)

Mr. Hurd swears (folio 170): "I told him we were contemplating buying a piece of property, and would like to have him look up the title to it and draw the contract. * * * We wanted to have some one protect our interest in the matter, and therefore we went to him because he had been doing business for us. * * * I think I told Mr. Roblin I would speak to Mr. Humphrey and have him draw the contract. * * I think he said we might get Mr. Bell. * * * I think I told him I had already spoken to Mr. Humphrey, and he said it didn't make any material difference. I think I told him at that time Mr. Humphrey was doing our business, and I would go to him and have him draw the contract. * * * Then he asked

him to go with him to Humphrey and give the description, which he did.

David Smith swears he went with Hiram D. Hurd to Humphrey's office and notified him they had elected to take the Baker title, and told him to draw the contract for the purchase of the same. (Folio 59.)

Contra. Mr. Roblin says he requested Mr. Humphrey to draw the contract. He had already been employed before he ever saw Mr. Roblin about it. Mr. Humphrey, it is true, rendered Mr. Baker a bill for drawing this contract of $2, but that circumstance is fully explained. He charged it to Hurds and Smith, but when he presented his bill for examining the title and drawing the contract he was informed by them that Baker would pay for drawing the contract, so he added it to the bill already made out against Mr. Baker. He never put it on his books and it has never been paid by Mr. Baker.

Before filing the original bill in this cause complainant asked Hurds and Smith to file it, claiming that they were entitled to the Humphrey title; in other words, that the employment which affected the title was by them and not by him, and only on their refusal to file it has he done so. In the original bill he charges that it was in an employment by Hurds and Smith after the contract was signed and after they took possession that Humphrey discovered the defect. This allegation of a fact stands against the complainant and is evidence against him.

In the case defended by Mr. Baker, which went to the Supreme Court, the testimony as recited in the opinion all showed an employment by Hurds

and Smith, and not by him, and upon that theory he submitted his case.

See opinion cited above.

But now he claims a direct employment of Mr. Humphrey. It is certainly a very strange discovery that he makes.

It is not claimed by this bill that Mr. Humphrey was not entirely true to Hurds and Smith. The original bill charged that he was not, and that he purchased the Chapman title to defraud them; but that charge has been abandoned, having been most conclusively disproved.

This whole question was submitted to the Supreme Court in Humphrey vs. Hurds, 31 Mich., 436, already cited; and after a full review of the evidence the Court says: "He seems throughout the entire business to have acted openly and fairly."

This should be considered as settling this point. But the testimony taken in this case is equally conclusive.

Watts S. Humphrey says: "I had stated to them the defects in the title, and advised them to purchase the Chapman title. * * That my brother, the defendant, wanted to purchase it if they did not. They said I might purchase it for him or any one else, as they would not. (Folios 91 and 92.)

John Atkinson testifies that he was present with Humphrey when he purchased the land; that he had before that time heard him state to Hiram D. Hurd that Bela Chapman appeared by an abstract which he had to be the owner of the land in dispute. That he had also before that time heard Hurds tell Humphrey

that they, Hurds and Smith, had concluded to buy from Baker, and trust to his covenants; and he said Humphrey might, if he saw fit, buy the land in question, as they would have nothing to do with the Chapman title. (Folio 133.)

David Smith, of the firm of Hurds and Smith, who had parted with his interest when he was sworn, testifies that some time before their purchase they employed Mr. Humphrey to examine the title; that he made or procured an abstract and told them the title was in Bela Chapman; and he and Hurds some time before they signed the Baker contract notified him that they elected to take the Baker title, and took possession some two weeks afterwards. (Folio 59.)

Hiram D. Hurd testifies that he told Roblin, Baker's agent, that Humphrey was doing their (Hurds' and Smith's) business, and he would go to him to have him draw the contract.

That they employed Mr. Humphrey to examine the titles, and having done so they were advised by him to buy of Chapman; but they told him they didn't chose to have anything to do with that, and preferred to take their title from Baker: that he told him he might do as he chose about buying it. (Folios 171 and 172.)

Under this testimony, uncontradicted as it is, there can be no doubt that Mr. Humphrey was employed by Hurds and Smith, as well to draw the contract as to make the examination. That he dealt fairly with them, and did nothing without their consent.

Having obtained their consent, he was certainly at liberty to do as he did.

Perry on Frauds, 177

Bearing this fact in mind that Humphrey acted with the consent of Hurds and Smith, the complainant's position becomes absurd, for he swears (folio 129) it is to protect Hurds and Smith that he pursues Humphrey. Hurds and Smith cannot complain, nor can he for them, of an act to which they consented.

They are estopped from asserting that this purchase was made for them. Because—

1st. They assented to its being made.

2d. This assent was made to influence the plaintiff or W. S. Humphrey, who purchased for the plaintiff.

3d. It did so influence him. He has acted upon it and made the purchase, and paid large sums in asserting his rights under the purchase, they making no such claim until now.

4th. He will be damaged if the defendants are now permitted to withdraw the assent then given.

It would be difficult to find a case calling more strongly for the doctrine of estoppel.

And if they are estopped Mr. Baker cannot on their behalf question ~~Baker's title~~ his title.

He alleges in his bill that they conspired with Humphrey to defeat his title, and yet he wants the Humphrey title for their protection. He demands the fruits of an alleged conspiracy from one conspirator to pass it over to another.

We have found no cases supporting complainant's theory.

Gailbraith vs. Elder, 8 Watts, 88, is nearest to it.

In that case the plaintiff had been prosecuting his claims to certain lands for the purpose of perfecting his title from the State.

The attorney was employed to aid him, and while he was still pushing his claims purchased himself from the State and claimed adversely.

The Court say that nothing less than the express consent of his client would be sufficient to allow him to do this.

Mark the difference between that case and this. Here the client had no title. He was about to purchase one of two conflicting titles and took advice before purchasing, and then concluded to disregard the advice received and purchase the one which he was advised was bad, and *expressly consented* that his attorney might buy the other.

The rule that regards transactions between attorneys and clients with jealousy is founded on the idea that the attorney by his position has a certain influence over his client which he cannot use for his own benefit. But in this case that idea is negatived.

Perry on Trusts, 204.

The only advice given by Mr. Humphrey his clients disregarded. They chose finally to rely upon their opinion and not on his.

What has he induced them to do? In what respect has his *influence* as an attorney been used to make them change their positions?

In Galbraith vs. Elder, the Court say: "It lies upon the trustee or guardian (to whom they liken an attorney) to prove that he apprized his *cesten que use*

or ward fully of all that came to his knowlege, so as to enable the latter to remedy the defect if he can, and that he has done nothing in this respect except what he has previously advised his *cesten que use* or ward of, so as to afford the latter ample time and opportunity of doing the same, or protecting himself against losing by it.

In this case the clients were fully advised of everything that came to the attorney's knowledge and were advised to do what the attorney afterwards did, with their consent.

There was no concealment, but the most frank, upright and correct advice on the part of Mr. Humphrey.

But it is claimed that admitting the employment to have been by Hurds and Smith, and the knowledge of the Chapman title to have been acquired in their employment, all of which appears. they could not release him from the duty he owed them not to purchase an adverse title.

This claim is, of course, inconsistent with the idea that the suit is for their protection.

It is founded on the idea that they owed Baker some allegiance.

To make Hurds and Smith, trustees for Baker there must be some trust reposed in them by him, or they must owe him allegiance springing in some way out of their contract.

There is no allegiance in such a case. The vendee as well as the vendor acts for himself.

It appears by the testimony that they were in no way acting for him. Roblin, 118.)

Mr. Hurd swears that in employing him, he was in no way acting for Baker. Folio, 170.

Roblin, Baker's agent, fully confirms this. He says: "In buying the property, Mr. Hurd was acting for himself. I was acting for Mr. Baker. I was selling to him. I did Mr. Baker's part myself. Hurd is not related in any way to Mr. Baker. * * * I am positive, as far as I know, that Mr. Hurd was not acting in any way for Mr. Baker. Mr. Hurd did not employ Mr. Humphrey as attorney for Mr. Baker. I am certain of that." Folio, 119.

But is it true that they could not purchase in an adverse title, and use it against Baker?

We will first discuss this question in view of the relation which existed between the parties, they having received a contract and being in possession, and see whether in that situation they could or could not purchase a title adverse to Baker.

In Rawle on Covenants, p. 160. The rule is stated: "The relation of landlord and tenant imposes upon both parties greater rights and obligations than that of vendor and purchaser. There seems no obligation of allegiance and loyalty on the part of the latter towards the title he has received. The mischief to which as between landlord and tenant the absence of such rule must lead would evidently be that a tenant having obtained possession from his landlord could betray it to another, and thus drive the former to an ejectment to regain the possession, and no landlord would ever be safe from the prospect of litigation. Hence the tenant's obligation to restore to him the possession. But as between vendor and purchaser there is no such danger. By

the contract as intended to be fulfilled the title and possession leave the vendor never to return to him; and with the execution of the conveyance, as a general rule, all the relations between the parties cease except those arising from the purchaser's obligation with respect to the unpaid purchase money, and his rights upon the covenants which he has received.

Blight's Lessee v. Rochester, 7 Wheat., 548. Ejectment. Plaintiff showed themselves to be the heirs of John Dunlap, who gave an executory contract to one Hunter, who conveyed to defendant. Plaintiff claimed that as grantee of Hunter, their ancestors' vendee, the defendants could not dispute their ancestor's title. But the Court held he could.

C. J. Marshall says: "The propriety of applying the doctrine of lesser and lessee to vendor and vendee may well be doubted. The vendee acquires the property for himself and his faith is not pledged to maintain the title of the vendor;" and speaking of his purchasing an outstanding title he says: "No principle of morality restrains him from doing this, nor is either the letter or spirit of the contract violated by it."

Opinion, p 548.

Watkins vs. Holman, 16 Peters, 54. The Supreme Court say: "The relation of landlord and tenant in no sense exists between the vendor and the vendee."

Osterhout vs. Shoemaker, 3 Hill, 518; Bronson, J.: "Although a tenant cannot question the right of his landlord a grantee in fee may hold adversely to the grantor, and there can be no good reason why he should not be at liberty to deny that the grantor had

any title. There is no estoppel when the occupant is not under an obligation, express or implied, that he will at some time or in some event surrender the possession. The grantee in fee is under no such obligation. He does not receive the possession under any contract express or implied that he will ever give it up. He takes the land to hold for himself and dispose of at pleasure. He owes no faith or allegiance to the grantor and does him no wrong when he treats him as an utter stranger to the title.

Bigelow vs. Finch, 11 Barb, 500. "The cases cited shows that there is no estoppel as between grantor and grantee. It exists only when there is an obligation, express, or implied, that the occupant will at some time, or in some event, surrender the possession; as between landlord and tenant, or between vendor and vendee, before conveyance * * * An estoppel has never been raised on a deed poll, or on a conveyance between grantor or grantee.

Hill vs. Hil, 4 Barb, 429.
Sparrow vs Kingman, 1 N. Y., 1 Comst., 243
In Keneda vs. Gardner, 3 Barb., 590, it is said:

"If the vendor has actually made a conveyance, his title is extinguished and the purchasor holds adversely to the vendor, and may controvert his title."

Little v. Pearson, 7 Pick, 301.
Kirtland vs. Pounsett, 2 Taunt., 145
Hough & Wood vs. Cyrus Birge, 11 Verm., 190.
Smith vs Stewart, 6 Johns. 46.

The vendee is entitled to whatever bargain he can make. He owes no duty but to pay the purchase money and keep his contract. It is simply absurd to

hold that two persons making a bargain with each other about land, one buying and the other selling, owe each other any duty of a fiduciary nature.

Suppose A is buying an estate of B with a mine under it of which A is aware and B not. Can the sale be set aside? No. Because A as the buyer was not obliged to make the discovery.

Sugden on Vendors, 6

If Hurds and Smith acquired this title themselves after entering under Baker, they could not in case of default use it to defeat Baker's suit for possession.

After default they would stand in the position of tenants at will, and could not deny the title under which they entered.

But even as between landlord and tenant no such rule prevails as that the latter buying an outstanding title must deed it to the former.

If he has received possession from the landlord he cannot in a suit against him for the possession dispute the landlord's title.

But if he did not receive possession he may.

Taylor, L. and T., 707.
Fuller vs. Sweet 30 Mich., 237.

And he may retire from the possession and then sue his landlord upon a title obtained during the tenancy.

Moshier vs Reding et al, 3 Fairfield 478.

If the tenant was compelled to deed over a title acquired by him, he could not then of course assert it afterwards.

And yet this doctrine has been advanced.

In Van Winkle vs. Hinkle, 21 Cal. 342, a landlord filed a bill to quiet title against his tenant, who was in possession, and who had purchased in an adverse title. The Court dismissed the bill saying, "A tenant may ~~re~~ acquire an adverse title; but he cannot use it against the landlord, so long as the tenancy continues."

See Williams et al vs Garrison, 29 Ga., 503.
Hodges vs. Shieles, 18 B. Mon. Ky., 828

There is another defect in the complainant's case which should dispose of it.

The bill shows, that at the time it was filed, Hurds and Smith were in possession, and the evidence shows, that since it was filed, complainant deeded the land to them.

The statute of Michigan, under which bills to quit title are allowed, is as follows:

"Any person having the actual possession and legal or equitable title to lands, may institute a suit in chancery against any other person setting up a claim thereto in opposition to the title claimed by the complainant, and if the complainant shall establish his title to such lands the defendant shall be decreed to release to the complainant all claims thereto."

C. L 1871, Sec. 5072.

Complainant is required to establish his title. In this case the evidence shows that he has no title.

It may, however, be claimed that as warrantor he has an interest in the title, and can maintain a bill of peace to settle it.

Bills of peace are only entertained after a trial of law, and to prevent multiplicity of suits.

Nor can complainant maintain his bill to prevent liability upon his warranty. If Hurds and Smith have conspired, as he alleges, to purchase in an adverse title, he may use that circumstance in defence, if they sue him on his covenants. But as warrantor he cannot file a bill of this kindexcept as a bill of peace, and after the title is decided in his favor at law.

We insist, therefore, that for the reasons stated in the opening of this brief, the decree of the Circuit Court must be affirmed.

John ATKINSON, HAWLEY & ATKINSON,
Of Counesl for Defendant Humphrey.